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ABSTRACT

Another in the series of paralegal training materials prepared by the National Paralegal Institution under a Federal grant, the document focuses on the interrelationship of paralegals, or legal assistants, trainers, and the basic principles of advocacy upon which later training in substantive law can be built. Part 1, Preliminaries of Training, discusses definitions, training sites, training objectives, and learner-focused training. Part 2, The Training Program, covers: preservice/inservice/clinical education; use of manuals; learner-focused training; role playing; advocacy and client interviewing; advocacy and investigation; informal advocacy with administrative agencies; advocacy and formal administrative hearings; the conducting of a formal hearing; advocacy and dealing with professionals and bureaucrats; advocacy and legal research; advocacy and legal writing; advocates, preventive law, and self-advocacy; advocacy and the paralegal's own agency; supervision and training; teaching substantive law; trainee problems; and evaluation of the training program. Supplementary materials (Evaluation Score Card for identifying advocacy techniques, Hearing Preparation Checklist, guidelines on conducting a cross examination, a dialogue on evidence, label quiz for analyzing statements of witnesses, guidelines for introducing or objecting to documentary evidence at hearings, and a Civil Servant's Personality Zone chart) are appended to individual chapters. A selected bibliography on paralegal training also is included. (EA)

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Teaching Advocacy: Learner-Focused Training for Paralegals

Second Edition

by
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PREFACE

This text is structured around the proposition that learner-focused training is (a) an effective way to teach law to layman and (b) a unifying principle to tie the entire training program together. To accomplish both ends the word "advocacy" is given its broadest possible meaning. The text is not self-executing; it calls for the trainer to develop his own training style, format and materials within the context of certain fundamentals of pedagogy.

The text grows out of a number of experiences: the training programs conducted by the author over the last five years and the fruitful exchange that the author has had with other trainers and program developers within and without the National Paralegal Institute during this same period. The text does not represent the official view of the Institute. The Institute generated it as an option for discussion and further development. The ultimate responsibility for the text, particularly its flaws, is the author's.

Bill Statsky

PREFACE TO SECOND EDITION

A number of topics were added to the second edition which will not be reflected in the Table of Contents:

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PART ONE

Preliminaries of Training

Chapter One

Definitions: Paralegals, Trainers, Training and Advocacy

This text is designed for trainers of paralegals. A "paralegal" is an individual who:

1. is not a licensed attorney nor a law student clerking for a lawyer during his law school years;
2. is not a legal secretary, at least to the extent of the legal secretary's ministerial functions, *e.g.*, typing, appointment-keeping, *etc*.;
3. is an agent, directly or indirectly, in that he or she is part of a legal service process designed to articulate and respond to actual and potential claims and defenses of clients;
4. performs activities that hitherto were performed by lawyers;
5. undertakes activities that lawyers have hitherto failed to undertake, but that we "normally" would expect lawyers to perform;

The primary focus of this text is the paralegal who works for, or substantially relates to, a lawyer in a law office setting. A "trainer" is an individual who:

1. may or may not be a lawyer;
2. may or may not be an expert in any phase of poverty law;
3. views training as something much broader than what takes place in formal classrooms and training sessions;
4. sees advocacy as something broader than courtrooms, cases, statues and regulations.

In short, a paralegal is anyone who makes a significant (non-clerical) contribution to the operation of a system of delivering legal services, and a trainer is anyone who helps the paralegal make this contribution.

"Training" is the process by which an individual develops skills in relation to specific tasks. Training can take place in a number of settings:

A. Formal Training

1. classroom sessions in the office;
2. classroom sessions in another agency or in a school or college.

B. Informal Training

1. on-the-job learning through instructions from others;
2. on-the-job learning by oneself.

"Advocacy" is the process by which an individual, directly or indirectly, attempts to influence the behavior of others according to pre-determined goals. An advocate is not simply one who argues in court, conducts a welfare "Fair Hearing" or who talks to a ghetto merchant on behalf of a client who claims to have received defective merchandise. A person who drafts a letter to a welfare caseworker asking for specified information needs to bring to bear advocacy skills in making this "inquiry". The same is true of a paralegal who files papers in court for an attorney and encounters some resistance from the clerk who is supposed to receive the papers. The same is true of: (1) a customer in a grocery store who claims that she has been short-changed by the clerk; (2) the pupil being disciplined for tardiness who claims that the teacher gave him permission to be late for class; (3) a parent who wants her obstinate teen-age daughter to stop going into a particular neighborhood; (4) a mayor who wants the city council to change a policy; (5) a policeman who wants to get citizen cooperation in solving a crime. *Advocacy is a fundamental component of a great many activities and as such is a basic way of life.*

As this text focuses on the interrelationship of paralegals, trainers and advocacy, several disclaimers need to be made:

1. the text does not treat any area of substantive law, e.g., the law of welfare or of consumer-creditor relations;
2. the text does not explore the ethical and legal implications of lay advocacy;
3. the text does not deal with the recruitment and selection of paralegals;
4. the text does not deal with the organization and reorganization of substantive law into "systems" which are then taught to paralegals.

Rather, the text proceeds upon the following assumptions and hypotheses:

1. although the boundary lines of paralegalism are not always clear, paralegals can make a contribution to the operation of a law office;
2. the case for the legality of lay advocacy has been made, primarily on the basis of a lawyer's supervision of a lay advocate's work product and/or the authorization granted by Federal and state administrative agencies to permit lay "practice" before them;
3. before introducing paralegals to extensive substantive law, it is appropriate to focus on basic principles of advocacy upon which later training in substantive law can be built;
4. distinctions between "training" and "supervision" tend to be misleading and counterproductive;
5. the program variables available to a trainer in the design of a training program are so broad that, given the input of his own imagination and a familiarity with the options available to him, an effective training "curriculum" can be constructed;
6. learner-focused training is the most effective way to "teach" advocacy.

The range in ability of paralegal trainees is extensive. No single text could take account of every level of ability that could and that does in fact exist. The following chapters attempt to chart a middle course between those trainees who do not need substantial structured training and those who need a step-by-step progression of training support.

Chapter Two

The Situs of Training
Where Should Advocacy Be Taught?

Considerable difference of opinion exists on where paralegals should be trained. The options are:

1) in-house
2) community agency (other than legal service office)
3) two or four year colleges
4) university extension and adult education
5) law school
6) specially created entity

Within the last eight years, all of these options have been tried and most are still training paralegals.[1]

In-house training is the most prevalent form of training paralegals in the country today. It has been adopted primarily by default, (e.g., because the other training entities are inaccessible). In-house training often consists of a series of informal training sessions, plus a heavy dosage of on-the-job training. There is a trend in education generally toward the "clinical" model of learning which argues that people learn best when confronted with the pressures and responsibilities of "real" situations or cases. On-the-job training is closely in tune with this approach. The problem, however, is that such training can be chaotic due to the lack of direction and follow-through.

Community agencies such as store-front consumer and landlord tenant groups have trained paralegals. They are a possible resource for legal service offices. The difficulty with such agencies is that their training programs are often sporadic and not rigorous enough for the needs of paralegals who will be working in legal service offices.

A few four year colleges have talked about degree programs for paralegals. The American Bar Association's Committee on Legal Assistants for Lawyers has proposed a four year curriculum for the "Legal Administrator." To date it has not been implimented, except in a few instances. Two year colleges, however, hold greater promise for future training. About six such colleges currently train paralegals (primarily for work in private law practices as opposed to legal services for the poor). A great deal of curricula design, however, will have to take place before the two year junior or community college can meet the demand for training.

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[1] For a survey of educational programs in the country, see Statsky, "The Education of Legal Paraprofessionals: Myths, Realities and Opportunities," 24 Vanderbilt Law Review 1083 (1971).

University Extension and adult education courses have also entered the field. Again, however, their efforts have been sporadic, experimental and not geared to the "public" law office. Two or three law schools have conducted training programs for paralegals. While at one time it was felt that the law school would become extensive trainers of paralegals, this view is seldom heard today. Except for consultant assigments in helping other entities to train paralegals, the role of the law school in this field is in doubt.

An entity specially designed to train non-lawyers is another option. Dixwell Legal Rights Association in New Haven Connecticut, for example, is an agency that was set up to train paralegals. Due to its budget and locale, however, it has not been able to meet a substantial share of the national training need. There is talk about the establishment of regional training centers for paralegals. Like the two year college, this possibility has been greeted with enthusiasm by many in the field.

Given the paucity of training options, most legal service offices have resorted to in-house training. The bulk of this text, therefore, is directed to training programs run by the office itself or by several offices in the same vicinity. While the text is so directed, it is submitted that the principles of pedogogy underlying the text are applicable to any training situs.

Chapter Three

Setting The Framework For Training; What Do You Have To Work With And Where Do You Want To Go?

Defining your goals (i.e., what do you want to accomplish) and determining what you have to work with (e.g., budget, materials, hours, facilities, capabilities, etc.) are obviously interrelated. You cannot set expectations beyond your capacities. It is nevertheless worthwhile to examine the issues of goals and capacities separately.

Section A. Defining Your Needs and Setting Your Goals

What are the needs of your office? Do you already have paralegals in your office whose advocacy skills you wish to upgrade? Do you have legal secretaries, for example, doing basic typing work whom you want to upgrade to paralegals? Is your office not handling a particular kind of case because of a manpower shortage and would an advocacy training program for paralegals help to alleviate this shortage? Is there a particular aspect of a case that your office regularly takes which is not being handled to the satisfaction of staff, but which could be handled more adequately by paralegals trained in advocacy skills related to that aspect of the case? Are people in your office duplicating each other's work? Do you need to systematize the handling of some cases so that the office has a greater control over the work-product of the office? Would a training program for paralegals address itself to this concern?

To state that there is a need to respond to questions such as these, is to say that the office needs to be thoroughly analyzed before deciding upon a paralegal training program for new employees or for employees already on staff whose skills need to be upgraded. It would be a mistake simply to assume that better trained personnel would always help no matter where they are working. The question is: *better trained to do what?* This must be decided, with as much specificity as possible, before the training program begins. If the office has simply a general idea of what the paralegals will be doing, it runs the risk not only of failing to solve its problems, but also of adding another layer of problems to those that already exist. Intensive pre-planning is an absolute essential.

The law office that is contemplating the use of paralegals must be confronted, examined and cross-examined in order to come up with an analysis that will pinpoint with precision the needs of the office and which will then raise the question of whether these needs can be met, in part or whole, through a paralegal training program. The best way *not* to accomplish this objective is to delegate it to one staff member. This is true even if the single individual is the director, a law student or an outside management consultant. The task, whenever possible, should be a *collective responsibility*. There can be one individual who coordinates the analysis; but he should do so with the goal of provoking an input from every participant in the law office involved in the production of legal services from the director to the clerk-typist. Master plans written in the abstract are destined to be weak. Analyses written by observers (even if they are participant-observers) tend to be interesting but untranslatable into action. Unless the coordinator-trainer (who is searching for the goals of a paralegal training program) can effect an investment from participants in the law office, these participants are not likely to follow through on the end-product of the office analysis and of the training program. The training program may be fine in some respects, but the trainees could be graduated into a structure that does not understand them, does not know how to relate to them, and, even worse, is threatened by them.

Does this mean that the office must close down for six months so that it can evaluate itself? Does this mean that you will need an expensive, inter-disciplinary, computer study to psycho-econo-socio-analyze the office? Certainly not. There are more than a few less drastic alternatives that can be suggested:

1) The office can conduct a half-day, miniconference in which segments of the office are broken down into little committees whose mandate is to examine one aspect of the evaluation/goal setting task;

2) Each staff member can be asked to answer a questionnaire that will be submitted to a coordinating staff member. If the respondent is an attorney, the questions can be along the lines of:

   (a) What tasks do you now perform? Categorize these tasks (either by subject-matter (e.g., welfare law, consumer law, etc.) or by skills (e.g., drafting, research, negotiating, court litigation, interviewing, *etc.*)

   (b) Which of these tasks, if any, are you overtrained to perform? What tasks tend to fall into patterns? Could any of these tasks be systematized through manuals, forms and checklists and delegated to non-lawyers?

   (c) How do you define your role? What is it that you are supposed to do? What is it that you are doing? What will help you perform your role better?

   (d) etc.

If the respondent is a layman working in the office, the questions can be along the lines of:

(a) What tasks do you now perform? (same as 2(a) above).

(b) What other responsibilities do you think that you could handle if you were given more training?

(c) etc.

3) Each staff member can be apprised of the fact that the office wants to re-examine its structure, that within the next few weeks it would be very helpful if everyone would think about what they are doing in the light of the following issues:

(a) What are our goals?
(b) How effective are we?
(c) How can we measure this effectiveness?
(d) Do we need to stream-line and systematize? If so, where?
(e) Are we making full use of all personnel?
(f) Do we want to delegate more work to non-lawyers? If so, where and how?
(g) Do we need in-house training for staff? If so, what kind? Who should do it? How much time will it take?

After the two weeks have passed, the office can call a staff meeting to deal with these issues, or the coordinator-trainer can interview each staff member individually to collect their responses to these issues. The director and/or the trainer should not permit any staff member to respond to these issues by saying: "We don't have the time." "Lawyers must do everything." "There are too many personality problems here." "What we need is more money, plain and simple." "We don't have the energy or the resources to train or supervise paralegals." Such responses are totally inadequate *unless the propenent of any or all of these views has thought through the issues involved.* It's too easy to reject the whole notion out of hand. There are those of us who need to be incited to assess our own provincialism. Most administrative agencies operate under pressure and one unfortunate by-product of pressure is a disinclination to re-assess and to try to define where the agency is and where it wants to go. Everything tends to be crisis oriented and the notion of direction is treated as a naive luxury.

The first responsibility, therefore, of the trainer is *to be an advocate for a participatory evaluation of the needs of the office.* Once this is done and the results of the evaluation point to the need for the development of paralegals, the task then becomes that of designing and implementing the training program based on the needs of the office.

Section B. Defining Your Capacities

Identifying the potential of a paralegal training program involves the following questions:

1) Who is available to do the training?

2) How much time can be taken to do the training?

3) What is the educational level of the trainees? Are they good "talkers"? Can they read and write? What skills will they need?

4) If you are going to upgrade present staff, will they need salary increases and who will perform the tasks from which they have been upgraded?

5) What facilities are available for training? (e.g., room space, tape recorder, supplies, notebooks that can become manuals, *etc.*).

6) Are outside people available to you to help conduct the training?

Section C. Foundation for an Evaluation

If the task of defining the goals and capacities of the training programs is done well, then you not only increase the possibility of constructing and implementing a workable training curriculum, but you also have laid the groundwork for something to evaluate. You will then have some criteria by which to measure the validity of your training concepts and the effectiveness of your paralegals generally. You will not fall into the trap, to which so many of us are addicted, namely, of riding on a wave of enthusiasm for paralegals without really knowing where we are headed.

It is submitted that 70% of the trainer's job is over if he has done adequate pre-planning and if he is flexible enough to respond to the variables involved. The actual training will then be relatively "easy", and perhaps more significantly, it will be fun. The importance of a trainer enjoying his work cannot be overstressed. He will enjoy it if he is in control of the training program; he will gain control if he brings to bear the painful energy required to be an advocate himself as to what is needed and who is needed to do the planning.

As a guideline to organizing the training program in anticipation of the task of evaluation, it is recommended that every trainer construct for himself a ten to twenty page questionnaire to be filled out by him or her before the training program actually begins. The questionnaire should be set up along the following lines:

PRE-PLANNING TRAINING
FORM

1. Name of Program.
2. Name and Title of Trainer(s)/Coordinator(s)
3. Define the purposes/objectives of the training program.
4. Describe any dissenting opinions in your office as to the purposes/objectives of the training program.
5. Describe the process by which these purposes/objectives were reached.
6. To what extent do you feel that the goals of the training program are understood by everyone in the office?
7. What are some of the ways that you are going to test whether your goals have been realized during or after the training program?
8. What will be your training format? Any outside trainers? How long will the training run? *etc.*
9. What is the preliminary outline of your curriculum?
10. How were the trainees recruited? Who did the recruiting? By what standards? Give a brief biography of each trainee.
11. Describe your understanding of what goals/expectations the trainees have for the training program and for their jobs.

For a more detailed discussion of the implementation of the evaluation, see chapter twenty-two, *infra.*

SUGGESTED TRAINING OBJECTIVES IN ADVOCACY COURSE

If the program decides to have training in advocacy, there are a number of objectives that it could identify following the analysis described in this chapter. For example:

1. define advocacy;
2. determine the extent to which the trainees were advocates for others or self-advocates before they came to the training program;
3. build upon the advocacy skills that they brought with them;
4. identify the connection between administrative advocacy and the following skills:
    a) client interviewing
    b) investigation
    c) trial advocacy
    d) appellate advocacy
    e) legal research;
5. identify agency problems of clients that can be resolved informally (without need of a formal agency hearing or court action);
6. deal with agency personnel at the line and supervisory levels;
7. use the standard communication vehicles with agencies: letters, phone calls, site visits;
8. understand the structure of bureaucracies;
9. identify and use the standard advocacy techniques;
10. know how to cite the law;
11. know when a client problem with an agency will require a formal hearing;

12. how to request a formal hearing;
13. how to prepare witnesses for a formal hearing;
14. how to use testimonial and documentary evidence at a hearing;
15. how to direct and cross-examine witnesses at a hearing;
16. how to preserve points for appeal at a hearing;
17. how to maintain issue control at a hearing;
18. how to get the agency hearing officer to issue a decision;
19. how to insure agency compliance with the result of a hearing decision;
20. how to work effectively with attorneys in realizing the above objectives.

Chapter Four

Learner-Focused Training and the Trainer

Section A. Three Orientations to Training

1. Learner-Focused Training

As used in this text, "learner-focused training" is the process by which (1) skills are developed and (2) substantive information is assimilated by:

FIRST: *Identifying* the skills and information that the trainees bring with them to the training program,

SECOND: demonstrating the extent to which these skills and this information *relate* to the "specialized" skills and information that will be required when they are on the job,

THIRD: building upon the skills and information so *identified* and so *related* to the end that they will be able to function effectively on the job.

The critical stage is the first. The starting point is the trainee and what he already knows through his prior training and experiences. This stage will not necessarily deal with specialized experiences that directly relate to the trainee's new job. In reference to the paralegal, for example, subsequent chapters will demonstrate that the starting point can be the "*non-legal*" experiences of the paralegal trainees. This will become the foundation upon which the subsequent two steps of learner-focused training will be based.

The foils to learner-focused training are (a) master-focused training or teacher-focused training and (b) subject-matter-focused training.

2. Master-Focused Training

Within the last few years, communication specialists have been telling us that what we say is less important than *how* we say it. This observation is preeminently applicable to the classroom. The content of classes is reading, writing, arithmatic and their derivatives. The structure of the classroom setting, however, tends to send out messages of its own. These messages are often so loud that the students can't hear the reading-writing-arithmatic stories. What are some of these structure messages? A few are suggested here:

a. I am the teacher, you are the learner;

b. I am the one who knows, you are the one who doesn't know;

c. There is so much to learn that you (the student) will be sanctioned if you think you already know a lot;

d. If you question too much, you will disrupt the lesson plan and discipline generally;

e. Learning happens within the four walls of the classroom, the learning that students bring with them to the class are personal ideosyncracies that need to be overcome;

f. Learning is hard work and painful; work and play do not go together.

These are some of the messages of master-focused training. The master or teacher is "up here" and the student or trainee is "down there:" the objective is to "elevate" the student to where the teacher is.

3. Subject-Matter-Focused Training

The structural messages sent out in subject-matter-focused training are:

a. If you don't know the terminology; if you can't spell the terminology; if you can't pronounce the terminology; you will never learn the substance;

b. Every topic /job/ arena is unique unto itself and that is why every topic /job/ arena has developed its own jargon;

c. The learning process has a beginning, a middle and an end; no step in the process can be skipped or covered out of order.

Subject-matter-focused training sets up its own realm of topics and teaches it as a separate universe.

Section B. The Structural Messages of Learner-Focused Training

Learner-focused training on the other hand, has a different set of messages which are conveyed by reason of the structure and format of its approach:

a. The student has something valuable to offer;

b. The student is a teacher;

c. Classrooms are discovery grounds where the participants mutually work things out and uncover approaches to problem solving.

d. The basic ingredient in any task is "commonsense" and a "feel for good judgment", these traits cannot be learned, but they can be developed, focused and refined in a training session;

e. It's OK if the training is enjoyable.

f. The student has a responsibility to make the training work not simply by doing all the "homework", but by helping to structure and evaluate the training itself.

Section C. The Three Orientations to Training and Paralegals

1. Subject-Matter Focused Training of Paralegals

Here the starting point would be "the law" (the subject-matter of the paralegal's job). The training would begin with a subject such as welfare law or consumer law. The subject would be covered from "a" to "z", with emphasis on the technicalities with which the trainee is presumably not familiar.

The danger of this approach is that the trainee will see his job solely in terms of cases, statutes and regulations: the jargon of the trade. He may not be made to understand that an essential ingredient of performing his job well will be his sense of perserverence, imagination and "good judgment." The trainer runs the risk of the paralegal being immobilized on the job because he can't remember the jargon or use the office law library. This is not to say that paralegal trainees should never be taught "the law." It is rather to argue that if "the law" is taught too early, the trainer runs the risk of producing paralegals who are dependent upon technicalities at the expense of having trainees who know that they must often draw upon their own creativity in solving problems on the job.

The best example of this is in the area of advocacy before administrative agencies. Agencies respond to pressure points; they are given to inertia and standardization which are overcome less by citations to legal principles than by pressure exerted on a human, interpersonal level. The effective advocate is the insistent advocate who won't go away; who is not intimidated by bureauratic policies and sub-policies; who keeps asking "why not" when the agency refuses to make exceptions to rules; who recognizes that beneath the agency's rationalization is a tired, burdened civil servant who is often confused about what to do in spite of the rationalization. An advocate who has this level of understanding of the dynamics of agency structure is in a good position to effect results. One of the best ways to *prevent* him from developing such an orientation is to attempt at the outset to fuel him with the jargon of the law and with the tools by which lawyers communicate with each other. Before "the law" is taught, the trainees should be given a foundation in what this text calls, "basic advocacy skills."

2. Master-Focused Training of Paralegals

The basic format of such training is the lecture. Lecturing is indeed a valid tool of teaching, so long as the lecturer recognizes the dangers inherent in his approach. For the paralegal, the danger of the "bad" lecture is again one of overdependence.

It is of course true that the lawyer and the paralegal work closely together on the job. It is essential that good working relationships are developed. In order for the paralegal to be able to make a contribution on the job, however, he cannot constantly be taking up the time of his supervising attorney with "how-to-do-it" questions. Paralegals must develop a level of independence under the general guidance of lawyers in the vast majority of situations, and under their specific instructions in the unusual situations. How is this kind of relationship developed? By demonstrating to the paralegal that he has his own unique contribution, that he has a head on his shoulders, that he can make decisions within the framework of office policy. It is perfectly proper for the paralegal to respect office attorneys *so long as the paralegal does not feel that he can't make a move without an attorney at his side telling him what to do.*

It is submitted that master-focused training often creates this kind of dependence on the attorney. The danger of the "bad" lecture is that the listener hears only the lecturer and not the topic of the lecture. When trainees are constantly "talked at", they may develop the sense that they won't be able to solve any problems on their own unless someone is at their side to "talk at" them concerning what to do. The lecturer may give lip service to the necessity of a paralegal's use of his own ingenuity on the job. If the lectures are so constructed, however, that there is little room for input by the trainee other than to listen, then the risk is created that the paralegal while on the job will be constantly waiting for instructions every step of the way. His input will always be dependent on a "lecture" by the expert on what to do. This is obviously not the definition of a good lawyer-paralegal working relationship. Lawyers simply don't have the time nor the inclination to track every move the paralegal makes. Lawyers, however, can unwittingly encourage such a relationship if they adopt a master-focused style of training and are unaware of the poor work habits that they are helping the paralegals to develop.

Again, however, this is not to argue that trainers should never give a lecture. Lectures can be an appropriate vehicle of teaching. The call is simply for caution: while lecturing, the trainer should be aware of the variety of messages that he may be conveying *in spite of what he is saying.*

3. Learner-Focused Training of Paralegals

As indicated above, there is a three step process to teaching paralegals according to the learner-focused format of training. Whenever possible the trainer makes use of role-playing (see chapter eight *infra*) not only as a way of getting the trainee to look at himself, but also as a way of demonstrating to the trainee that problem-solving often calls for on-the-spot ingenuity as well as for knowledge of technical matters.

1. Start with the "non-legal" experiences and skills that the paralegals brought with them to the training program. How did they resolve problems before they decided to become paralegals? What did they do, for example, when they felt that the corner butcher short-changed them? What skills did they bring to bear? To what extent were they self-advocates?

2. Show that the way in which they solved problems before they became paralegal trainees is relevant to the way in which they will be asked to solve problems as paralegals. There *is* a definite relationship between convincing a butcher that he acted improperly and convincing a welfare caseworker that he has acted improperly in reference to a welfare client. That relationship is basic advocacy skills.

3. Finally, the training program gives the trainees the tools to evaluate the advocacy skills that they brought with them. When their prior experiences have taught them bad habits, this is corrected. The technical aspects of the paralegal's job (*eg.*, cross-examination at an administrative hearing and substantive law) are then built upon the basic advocacy skills training.

When this approach works well, the paralegals are not overly dependent on technicalities or on experts; they know how to relate to both within a law office environment. They begin to see the "common sense" and experiential foundation of jargon and hence are able to deal with it. They know that when they are in the field investigating or on the phone arguing with a ghetto merchant that this sense of "good judgment" and their understanding of human nature will be as important to getting things done as knowing what "the law" is and being able to use the jargon. When they run into difficulties, they know the difference between using their own imagination and asking a lawyer what to do. The two approaches are not mutually exclusive; they complement each other. They are always anxious to learn "more law", but they understand that knowing "more law" is not always a substitute for their own "hustle" in the field. Knowing "more law" may in fact be the ticket to resolving the problem; but it takes a thinking human being to be able to apply the law and a primary ingredient of such an individual is a "feel for good judgment." The critical responsibility of learner-focused training is to identify this "good judgment" in the trainees and to build upon it so that they are able to work with lawyers and function in a law office setting. The following chapters in this text are designed to get at this reponsibility in terms of developing curricula styles and content.

Section D. Criticisms of Learner-Focused Training

You may argue that learner-focused training sounds nice, but it leads nowhere. One commentator suggested that by adopting this approach you run the risk of graduating paralegals who feel good about themselves, but have no skills. A learned professor of law recently made the following comments about the assumptions underlying learner-focused training as outlined above:

> "As for your views about the training of paralawyers, I have to admit that I am not, like Rousseau, and adherent of the theory of the Noble Savage. I think that you are. You tend, much more than I do, to think that the persons whom you may enlist will be better equipped than you are to identify the areas in which they need training. You propose to draw on them to make the curriculum, as it were. Moreover, you put a high value on their past experience, which you seem to think will be much more pointedly pertinent than the past experience of the corps of trainers. In my view, experience can be a bad teacher as well as a good teacher, and in many, many cases it misleads into continued error rather than leads toward enlightment. We constantly speak of the virtue of learning by experience, but observably very few people do learn except to the extent that their experience falls into routine patterns, from which escape often proves to be difficult when departures from the routine are suitable. One recalls the folk tale of the indignant woman who left a lecture on child care, querulously remarking to her companion: 'Who does that doctor think she is, telling me how to bring up children-me who has already brought up eleven children and six of them under the sod already, bless their souls.'
>
> "Of course I do not go to the other extreme and say that the past experience of paralawyers should be ignored. It is obviously something upon which to build. I simply had the feeling as I read your pages, however, that you were much more inclined to allow past experience to determine the architecture of your structure, as it were; I would regard it as one of the elements of the foundation, but not as a model for the super-structure one was seeking to construct."

These comments are, of course, very well taken. There is a distinct danger in going too far. The key is flexibility. The trainer needs to have a proper balance between providing direction and letting the learners "run the show". Without this balance, chaos can result. It is indeed very possible that a trainee can come to a training program with "bad" habits which have been formulated as a result of "bad" experiences in the past. An attempt to "correct" or to reorient such a trainee is *not* inconsistent with a learner-focused philosophy of education. This philosophy would suggest a specific approach to effect this correction, namely, the provision of a setting by which this trainee can correct himself. Supportive vehicles must be used, such as role-playing, to let the trainee look at what he is doing and find out if he ought to consider a different approach. If this does not work and the trainee persists in his mistaken ways, then someone will simply have to tell him so. Learner-focused training does not tie anyone's hands. It merely suggests to the trainer that he should first try to achieve his goals through the trainee before resorting to authoritarian guidelines.

Another possible criticism of learner-focused training is that the trainees themselves may not go for it even if the trainer thinks that it is good for them. Laymen want to be "taught the law" and will insist on this from a training program. This demand is legitimate but should be resisted if the demand is made prematurely. Some trainees, for example, may advance faster than others and may be ready for substantive law sooner. In such cases, these trainees may be permitted to move ahead of the others, or, much more appropriately, these advanced trainees may be enlisted to help the trainer reach the slower trainees who need more help in developing basic advocacy skills. (See chapter twenty-one *infra* on the slow learner).

Section E. Does the Trainer Have to Be a Lawyer?

No. Happily, the day is passing when the legal profession is deemed to have a monopoly over advocacy skills. Advocacy is a basic component of all occupations, professions and life-styles. Some work areas are beginning to give formal recognition to this fact, *e.g.*, the advocate-social worker, the advocate-journalist, the advocate-architect, *etc.* A major aspect of the conflict within contemporary churches is whether clerics ought to get out into the community and, in effect, becomes advocates. The political arena is, of course, infested with all levels, shapes and types of advocacy. Child-rearing is probably the most fundamental example of advocacy in our civilization. In short, all of us spend enormous amounts of time trying to develop/stabilize/immobilize the behavior of others according to certain objectives.

A trainer of advocacy needs to be someone who can grasp the universality of advocacy, who can identify the basic components of advocacy and translate them into skills. Lawyers can certainly meet these qualifications *as long as they are not preoccupied with advocacy as statutes, cases, regulations and courtrooms.* A lawyer who is so inclined should *not* be a trainer of paralegal advocacy. As indicated above, a trainer who sees advocacy only as a technical specialty is likely to convey this impression to paralegal trainees and hence run the risk of stifling the advocacy skills that these trainees *brought with them* to the training program and that need careful development. There are, however, at least two aspects of the overall training picture that may call only for the presence of a lawyer:

a. At the very beginning of the training program when the difficult pre-planning described in chapter three must take place, it may be that only practicing attorneys can do the job of analyzing the effectiveness of the law office in order to identify needs that might be solved by a paralegal training program;

b. At the end of the training program, when it is time to teach substantive law to the paralegals, it may be that only the practicing attorney specializing in these substantive areas can do this job adequately. Furthermore, there are components of basic advocacy (*e.g.*, preservation of evidence in investigation) that will need a lawyer input to the teaching. This will come either through the presentation of substantive law by the lawyer or through the lawyer's input into the design of the basic advocacy course. (See chapter nineteen *infra* on roles for the lawyer in the training.)

The basic advocacy course, however, that comes between these two points, does not necessarily have to be taught by an attorney. A VISTA volunteer, an ex-Peace Corps volunteer, a social worker, a public school teacher, a community worker, a welfare rights worker, a veteran paralegal, *etc.* - any one of these individuals could teach the basic advocacy course.

PART TWO

The Training Program

Chapter Five

Training Overview: Pre-Service Training, In-Service Training and Clinical Education For Paralegals

Section A. Overview

The following outline is *an option* for the entire training program (the time estimates are rough calculations only based upon a hypothetical training program of one trainer and seven trainees):

PHASE I: Pre-Planning: three weeks
PHASE II: Pre-Service Training: Basic Advocacy Course: five weeks
  A. Classroom time: three and one half weeks
  B. Clinical Assignments: one and one half weeks (aggregate)
PHASE III: Begin Employment: three weeks
  A. Office Responsibilities: two weeks, three days
  B. Classroom time: two days
PHASE IV: In-Service Training: Substantive Law: six weeks
  A. Classroom time: four weeks
  B. Clinical Assignments: two weeks

Pre-service training takes place before the trainees have begun assuming full office responsibilities. They begin such training immediately upon recruitment. In-service training occurs after the paralegals have been on the job for a period of time. Paralegal clinical education refers to the opportunity to experience "live" law office problems *during* pre-service and in-service training. For example, during the class sessions on investigation, the trainees can be given an actual investigation problem (*e.g.*, find out if there is anyone still living in an apartment building that was recently condemned or locate an individual for service of process), or a consumer problem (*e.g.*, go into a store that has advertised a sale and determine whether it has the models and prices as advertised).

Section B. Clinical Education for Paralegals

The value of the clinical experience cannot be overestimated. It provides a unique opportunity for the trainees to put their training into focus while still under the guidance of the formal training program. Fact hypotheticals and role-playing are very useful, but they can reach a point of diminishing returns (see chapter eight *infra* on role-playing).

For clinical education to work, the following guidelines should be considered:

1. *Stagger the variety of the clinical experiences.* At any one period of time during the pre-servie and in-service training, each trainee should have at least two office or field assignments that relate to what is being covered in the classes. As one assignment is completed, another is given. Each trainee moves at his own pace. All of the trainees need not be working on the same kind of problem (*e.g.*, an investigation assignment). Some can be working on interviewing, others on investigation and still others on informal advocacy depending upon their own initiative, the length of the assignment and the difficulties encountered. The trainees flow into and out of a variety of assignments throughout the training. This is important because the trainees need to begin to see and experience the overview as soon as possible *during the training.*

2. *Be flexible in scheduling the clinical assignments.* The trainer should phase into the clinical experiences. Start slowly at first. As the formal training program moves toward completion, the percentage of time spent on clinical assignments should be increasing. During the first week, for example, just one afternoon may be given over to clinical assignments. Later on, it may be that every morning will be filled with classes and every afternoon with clinical assignments.

3. *Structure the clinical experiences so that they can be brought to completion relatively soon.* The clinical experience should not take months to complete. If the trainee can't do anything until he gets a response to a letter, for example, the assignment may not be appropriate unless the trainee can be kept busy on his other assignment(s) while waiting for the response. This is not to say that the trainees should not be given any difficult tasks or ones that could be frustrating. It is very important that the trainee experience difficulty and frustration if they flow naturally out of the assignment. The point is that this can be totally impractical if the trainee cannot at least get a handle on what he is supposed to be accomplishing.

4. *Teach the trainees how to manualize before they have any clinical assignments.* (See chapter six, *infra* on manualizing).

5. *Provide supervision.* Chaos will result if no one is available during the clinical assignments to provide guidance to the trainees. The trainer will provide most of the supervision, but he should not do it all alone. He should enlist the involvement of the office attorneys. The sooner they begin relating to the trainees and to the actual training program the better. This does not mean that the attorneys must spend hours explaining things to the trainees. In some instances, the trainee will simply follow the attorney around; in others, he will be asked by the attorney to undertake tasks under his instructions. The trainer is always available to terminate an assignment if it becomes too burdensome for the attorney or too overwhelming for the trainee.

6. *Relate the clinical experiences to the classes.* A test of the success of the clinical experiences is whether or not they enrich the classroom instruction. The classes won't be conducted in a vacuum if the trainees are regularly raising points that come out of their clinical assignments. Note that everyone will not necessarily be having the same or similar experiences, since the variety of assignments will be staggered. When the class on advocacy and investigation is taught, for example, some trainees may not have had any investigation experiences yet, others may not have completed their investigation assignments, and still others may have completed them weeks ago and are now dealing with interviewing or informal advocacy with administrative agencies. This diversity of experience can be as confusing as it can be rewarding. To be sure, the trainer must keep the session under contol and not let certain trainees dominate the discussion at the expense of those trainees that have either not had the same kind of assignment or not are not yet ready to know what to say about their assignment. For example, if the trainer is conducting a class on topic "X", he should not necessarily let a trainee take the class to topic "Z" because the latter is the topic that most recently relates to the trainee's clinical experience. The trainer will have to decide how much of "Z" he wants to cover at a time when he is dealing with "X".

As will be demonstrated in subsequent chapters, advocacy principles are applicable to numerous paralegal undertakings in the law office. The value of having the variety of clinical experiences staggered during the formal training is that this interrelationship can be made very early in the game. It may be that the basic advocacy techniques involved in topic "X" are the same as, or only slightly different from, those involved in topic "Z". The sooner this connection can be made the better.

Section C. Pre-Service Training

The basic advocacy course is taught before the trainees are fully employed, *i.e.*, during pre-service training. The topics covered during this period are:

1. Manualizing
2. Basic Advocacy
3. Advocacy and Interviewing
4. Advocacy and Investigation
5. Informal Advocacy
6. Formal Advocacy
7. Dealing with Professionals
8. Advocacy and Legal Writing
9. Legal Research
10. Teaching Clients to be Self-Advocates

Throughout the pre-service training the trainees are given clinical assignments that relate to some or all of these topics. The pre-service training should cover about five weeks, with approximately one and one half weeks of the five (in the aggregate) devoted to clinical assignments throughout the five week period.

Substantive law (*e.g.*, welfare law, consumer law *etc.*) is not formally covered during pre-service training, although it is obvious that a good deal of substantive law will come up. The trainees will be dealing with some substantive law through hyhotheticals, role-playing and clinical assignments, but the focus will be on basic skills rather than on a detailed knowledge of the substantive law.

Section D. Commencing Employment and In-Service Training

After the basic advocacy course, the trainees should begin employment and remain on the job for approximately three weeks. They will be engaged in a series of responsibilities such as interviewing, investigation and informal advocacy that will (a) force them into a full time utilization of the advocacy skills covered in the basic advocacy course and (b) prepare them to absorb the six weeks of substantive law trianing that will come later during in-service training.

This employment interval between pre-service and in-service training is, in effect, a continuation of the clinical involvement that began in pre-service training. Now however, the clinical experience has become full time. The paralegals are fully integrated into the flow of a busy law office. Again they will be picking up considerable "chunks" of substantive law during this period. More importantly, they will be better equipped to ask questions about and absorb the technical aspects of substantive law during in-service training. Substantive law will not be a foreign entity to them; as it is taught during in-service training, they will be able to fit it into the overall picture because they will have already been a part of the overall picture. They should be well prepared to articulate their frustrations concerning the substantive law. The trainers of substantive law can and should spend considerable time keying their presentations into these frustrations.

During the three-week interval between pre-service and in-service training when the paralegals are on the job, the trainer who taught the basic advocacy course should be available to call the group together periodically for training and administrative sessions. Within the three week period, such sessions should take up about two full days (in aggregate) unless it becomes clear that more or less time is needed. These sessions should not deal with the teaching of substantive law, but should be geared to common problems that relate to the basic advocacy course. The sessions may be of help in structuring the timing and focus of the substantive law courses to be given during in-service training.

When in-service training begins, there again should be clinical experiences structured so that the technical topics covered will have an experiental base. The same guidelines on structuring clinical assignments during pre-service training apply to in-service training.

For a discussion on approaches to teaching substantive law, see chapter twenty, *infra.*

Chapter Six

Manualize, Manualize Manualize

Section A. General Principles

It's always valuable to consider the use of written documents or training texts during a training program. Several general principles should apply to the use of texts or manuals:

1. Overly-long Manuals are Unusable.

Long texts are always dangerous, particularly for a trainee who is not accustomed to using such material. They can be frightening. Brief manuals that are written in outline/checklist fashion can, on the other hand, be very useful.

2. Manuals that are Written Exclusively by Non-Users of the Manual are Suspect.

Trainees tend to make use of materials that they can identify with. They tend to identify with materials that they have had a hand in organizing or writing.

3. Texts that can only be Used during the Training are Suspect.

Whenever possible an attempt should be made to use texts that carry-over from the training to the job. This is another way in which to make the text more meaningful to the trainee during the training program.

Section B. Suggested Approaches

With these general guidelines in mind, several options can be suggested. To be sure, some of these suggestions may be much more time consuming than having the trainer write everything himself or getting another professional to put everything together for the trainees. It is submitted that the time ought to be taken to get the trainees involved in writing something themselves in conjunction with the text(s) that are prepared for them. In the long run, the extra time may prove well worth the investment in terms of increased useability of the texts and of increased effectiveness on the job.

1. *Teach the Trainees the Difficult Art of Taking Notes: Guidelines, Outlines and Checklists*

At the outset, considerable time should be taken in training the trainees to take notes on whatever they read and whatever is said to them that relates to their job. More significantly, they should be taught to take notes in the form of guidelines, outlines and checklists. This is not an easy undertaking and the trainer may have to drill himself in the technique before he cover it in class. Once a trainee gets into the habit of taking notes and of translating them into guidelines, outlines and checklists, it will become second nature to him. It may be a slow and painful process in the beginning. The trainee may have to first take his notes and then translate them separately. After he gets into the habit, however, he should be able to do both at the same time, or at the very least, to spend very little time organizing his notes into guidelines, outlines and checklists after he has written them down initially. The real test of whether a listener can do this well is when he "forces" the person talking to him to say what he has to say in such a way that the listener can take the notes initially in the form of guidelines, outlines and checklists. It is true that people usually don't talk this way; but, they can be encouraged to talk this way through the manner in which the listener/questioner asks his questions.

The training implications of this process are enormous. The trainee is being taught to listen and to organize. Futhermore, good note-taking is the first step toward good record-keeping. What better way for the office to know what a paralegal is doing and how he does it than to look at the paralegal's guidelines, outlines and checklists?

The two cardinal rules of note-taking in this fashion are:

A. *Think of what people are saying in terms of "How To Do It".* If someone is talking about interviewing the listener thinks in terms of "how to interview;" if a trainee picks up a book on pleadings, he thinks in terms of "how to write pleadings" *etc.*

B. *Take your notes chronologically; ask the person talking to you to say what he has to say in terms of a beginning, a middle, and an end.* This is not to say that if it is not done in this way, the meaning will be lost. This technique is simply an organizing tool that may be helpful. If someone is talking about the initial client interview, for example, the listener should ask that the material be presented in such a way that the listener hears the process described from the moment the client walks into the door to the moment when he leaves the office.

Start off with some very simple drills. For example, use the following hypothetical lecture to the trainees and ask them to take notes on it:

> "People working in this office get paid every two weeks. It is essential that you turn in time sheets. A problem that often comes up is sick leave. The employee should call in whenever he is sick. He should talk to his supervisor or

> leave a message. If the employee knows that he will be out on the following day because of sickness, he should speak to his supervisor about it in advance. Always have your doctor's slip or hospital records available to show that you were involved in a medical problem."

Now ask the trainees to take five minutes to organize their notes in the form of guidelines or checklists. Collect them and discuss samples with the class. A "bad" organization might look something like this:

> "Working-pay. Two weeks Sick leave. Have records."

Needless to say, these notes were not well organized. A "better" organization might look like the following:

I. Pay

- -turn in time sheets
- -paid every two weeks

II. Sick Leave

- -speak to supervisor in advance when possible,
- -call in,
- -speak to supervisor or leave a message
- -have records available, to prove you were ill.

This form is somewhat more useable than the previous one. It is organized into the main topics (the outline) and it is presented in a relatively consistent fashion (chronologically). It is a checklist for future reference.

Provide the trainees with more drills similar to this. Some will catch on quickly; others will need a great deal of help. As you get into the basic advocacy course, check to see if they are taking notes properly. As they engage in clinical assignments, check to see if they are recording their experiences in guideline, outline, checklist fashion.

2. *Manualize As You Go*

A *manual* is a collection of guidelines, outlines and checklists. If the trainees are taking their notes properly, they are beginning to write their own manuals for use during the training *and on the job.*

Although it is clearly necessary that the office be run uniformly, it is *not* absolutely necessary that everyone perform every detail in exactly the same way. Hence the trainer and the office should not make a hard and fast rule that every manual must be the same. To be sure, differences as to when to file a pleading or in what court to file it should not be tolerated. But this is not the case in interviewing, investigating and conductiong administrative hearings. Advocates may have their own style and approach.

This diversity should be encouraged so long as the end-product is what the office needs.

The trainees can share their thoughts on guidelines, outlines and checklists with each other and submit them to the office for approval, but this does not mean that everyone must mechanically follow the same path. Chaos will *not* result from this approach if it is done properly. The result may well be creativity and good record-keeping.

3. *Manualize Segment by Segment*

There is no need to have everything together at once. Take it segment by segment. For example, as a starter, after the trainer finishes a particular topic in the training, ask the trainees to take fifteen minutes to put together a checklist that will be helpful on the job in order to apply the topic just covered. Go over this first attempt carefully. Point out that it's "ok" if everyone does not have the same checklist, and that it would be a good idea for a trainee to borrow some of the good ideas that their fellow trainees come up with. Point out also that they should do this on the job as well. *Point out that if they get into the habit of doing this now, it will not be time consuming when they do it later.*

You may want to tape-record a particular segment of the training and assign several or all of the trainees to listen to the tape afterwards with the objective of coming up with guidelines, outlines and checklists on the topic covered on the tape.

The form of the overall manual should probably be organized by substantive headings, for example:

I. Interviewing Clients
  a. for eligibility;
  b. for information on case; *etc.*

II. Field Investigation
  a. interviewing witnesses;
  b. physical evidence; *etc.*

III. Welfare Law
  a. How to spot the issues;
  b. The structure of welfare in this state;
  c. Calling caseworkers;
  d. Requesting a hearing;
  e. Conducting the hearing;
    1. presenting your case;
    2. direct examination;
    3. physical evidence, *etc.*

The trainer may want to write out the overall structure in advance of the training with the trainees filling it in along the way, or toward the end of the training, the trainer can take some time with the trainees to come up with an overall manual design into which they can place the guidelines, outlines and checklists that they have prepared during the training and which they will continue to prepare on the job.

The objective is to get them to fill in as much of this outline, in terms of how-to-do-it techniques, as possible. When they are on the job, they will continue the process. The trainer and the office may want to write certain parts of the manual for the trainees. This is fine, *but first let them take a stab at doing it themselves. You will never know where there is creativity unless you look for it and provide a forum for its expression.*

4. *Cross-Check the Manuals*

Equally important, get the trainees into the habit of getting other staff members to review the checklists that they are putting into their manuals. This process is started druing the training by having the trainees submit drafts of their checklists to the trainer. Why not also involve attorneys in the office? After everyone has a draft of a checklist, assign them to track down one of the office attorneys in order to briefly explain it to the attorney and to get his reaction. This could take but a few minutes and it will start the process of getting the paralegals and the lawyers to relate to each other.

When the trainees are on the job, they should continue this procedure. It may take a little more time in the beginning when the manual is in its formative stages but after a few months on the job, the paralegal may go to an attorney for cross-checking a segment of the manual once every three or four weeks.

5. *Have the trainees comment on bad checklists.*

Sometime during the training, the trainer should provide the trainees with samples of poor checklists for their comments and revisions.

6. *Re-Manualize as You Go.*

Finally, the trainees needs to develop the habit of re-drafting their own checklists as they proceed with their job. After the advocate comes back from his first field investigation or his first welfare hearing, he should be encouraged to go back to his two or three page checklist/guideline sheet covering that area and re-draft it. After he completes his twenty-fifth hearing, he should again re-asses and re-draft in the light of his more recent experience.

Again it should be pointed out that this entire approach to manuals can be a monster or it can be an enormously effective mechanism of quality control and imagination. If done improperly, it can waste time,energy and resources. If done right, the positives that can flow from it are considerable. For example, if an advocate has been taught to function and think in this way, he can become an excellent resource to train other paralegals.

It is strongly urged that this approach not be rejected before it is tried. There will be many "bugs" to work out in order to get the system flowing smoothly. The end-product, however, may be well worth the effort.

Chapter Seven

Finding Advocacy: Launching Learner-Focused Training

Recall the character in one of Moliere's plays who discovered, to his great delight, that he had been speaking "prose" all his life. The goal of the first major step in the basic advocacy course, taught by the learner-focused method, is to determine the extent to which the trainees have been advocates all their lives. The advocacy techniques that they brought with them are first recorded, classified and expanded upon. The direction of the lesson plan is to come up with a *checklist of basic advocacy skills* which is then evaluated. The remainder of the basic advocacy course will explore the extent to which this checklist applies to a variety of paralegal responsibilities. As needed, the checklist is reassessed and revised. It is the unifying principle of the entire course on basic advocacy and is the paralegal's starting point on the job.

Section A. Recording the Responses

Begin with a hypothetical fact situation such as the following:

> You enter a ten story building and are late for a meeting. You get on the elevator. The operator does not immediately start up, but waits until some other people get on, even though no other potential customers are in sight. You look at your watch and begin to get nervous. Finally a stranger gets on with you. Again no movement. The operator is apparently waiting for more people to get on. You continue to get nervous. What do you do?

Note four things about this hypothetical:

1) the facts are relatively simple (in order to facilitate discussion);

2) the facts involve an everyday occurrence (in order to make the point that advocacy skills are not limited to specialists);

3) the facts do not necessarily involve any questions of law (in order to make the point that advocacy skills are not limited to lawyers);

4) the facts involve self-advocacy (since the best way to demonstrate to the trainee that advocacy is natural to him

is to show him how he advocates for himself everyday).

There are numerous other fact situations that you could use which would meet each of these four criteria equally well. For example, you are at a bank waiting in line, the teller suddenly closes his window just before he gets to you. What do you do? Another: you are at the post office and you are told that you used the wrong kind of string to wrap the four packages that you want to mail. The clerk refuses to take the packages. What do you do? Another: you are on a crowded bus standing next to the exit door. The bus driver stops the bus and tells you that you must get off because there are too many people on the bus. This is not your stop. What do you do? *etc.* If preferred, the trainer may want to use a fact situation that is more overly legal, e.g., you dispute a claim by the phone company that you have not paid your bill.

Using the elevator hypothetical as the basic example for this chapter, the first step is to *record the responses* that the trainees have to the facts. What would they do? What would they say? It may be best to have the trainees write down their responses on a piece of paper to avoid the problem of having one or two trainees do all of the talking and thinking. After the trainees have written down their initial responses, have them write down several other responses that they think would be possible under the circumstances. When the trainer has collected the responses and read them aloud, he should see if any other responses comes to their minds which can be added orally. The trainer may suggest responses himself, but only after he has exhausted the list that the trainees come up with themselves.

The trainer should write the *non-repetitive responses* on the blackboard or on a large chart which everyone can see.

What follows is a listing of non-repetitive responses that the trainees *could* collectively have come up with. (Note that the responses that the trainer *actually* records from the trainees may be quite different, depending upon the hypothetical he uses and the degree to which he hustles for a variety of responses. This difference is no cause for alarm so long as the trainer is headed in the same direction as outlined below):

#1. "I would begin to stamp my foot to let the operator know that I'm waiting for him to move."

#2. "I'd ask the operator if he has to wait until more than two people are on the elevator before he can move."

#3. "I'd tell the bastard to move!"

#4. "I'd explain to him that I'm in a hurry and that I'd appreciate it if he would take me up."

#5. "I'd get off the elevator and walk up."

#6. "I'd just wait till he's ready and when he finally takes me up and I have had my meeting, I'd find out who his boss is and complain."

#7. "I would try to engage in some 'chit-chat' with him such as 'nice day isn't it', or 'have you had a busy day', in order to see if this wouldn't get him to do something."

#8. "I'd try to get friendly by asking him if I could get him a cup of coffee on my way down after my meeting 'which started fifteen minutes ago.'"

#9. "I'd tell him that I'm not accustomed to being late for important meetings."

#10. "I need more facts before I could tell you what I would do. For example, did the operator have an attitude? Was it after 5 PM when he was about to go off duty?"

#11. "I'd ask myself which is more important: to avoid a hassle or to confront the operator to get what I want."

#12. "I'd first tell him to move and if he refused, I'd go find the manager."

#13. "I'd ask him if he really thinks he's serving the public by making me wait."

#14. "In a quiet voice I'd say to the stranger who just walked in, 'what do you think he's up to?'"

Some of the responses may be humorous; record them if there is a consensus from the class that the response is conceivable. The goal is to get the trainees involved in the process of coming up with reasonable *or unreasonable* responses. Don't just record the "good" responses. At this stage, you want to record, not evaluate. If someone states an absurd response, this will provide "meat" for subsequent discussion and analysis. If someone tries to analyze a response now such as by saying "it would be silly to do it that way," stop him. Explain to the class that you first want to get all of the responses down on paper and discuss them later. If the trainer has provoked a lively interchange from all the participants, the result should be a numerous variety of responses both from the lists that they prepared before the trainer began to put them on the blackboard and from the thoughts that came to the trainees after the responses began to be communicated out loud.

Do not let one or two trainees dominate the session. It will soon become clear to the trainer which trainees are shy or are holding back for any reason. Draw these out. Ask a "quiet" trainee what his response would be even if you are reasonably sure that he won't come up with anything that has not already been said before. At least get him to say something. Be supportive of what he says. This may be the needed push to get the trainee into the mainstream of the class discussion. (On the slow learner, see chapter twenty-one *infra*).

Section B. Classifying or Translating the Responses into Advocacy Principles: Threshold Concerns

Now comes the second most critical phase of the advocacy training program. The first is the pre-planning described in chapter three *supra*. The second comes after the responses have been recorded and the moment is ripe to categorize skills. The goal here is to come up with a guidance outline, a series of catch phrases, a working checklist of advocacy skills. The trainee should have a frame of reference to analyze what advocacy skills he is using *to the end that he will develop the facility to match or apply particular advocacy skills to particular goals, and the flexibility to shift from one advocacy skill to another in order to maximize his efficiency.*

At the very least, an entire training day (seven hours) should be spent developing this skills outline. Further time should be spent perfecting this outline so that it is firmly entrenched in every trainee's mind. Before moving to specific applications of the basic advocacy skills to such areas as investigation and administrative hearings, the trainer should assure himself that each trainee can master the categories and apply them with reasonable flexibility.

If the trainer has not been able to record a sufficient diversity of responses, he is not ready to have the trainees work on the skills outline.

The trainer should go over each response recorded and ask the group the following question:

> What technique does the response demonstrate in getting people to do something or to change?

Translated into slightly more relevant language, the question becomes:

> What advocacy skill does the response demonstrate?

The final outline should be divided into four parts:

I Threshold Concerns
II Choosing a Skill
III Evaluating the Skills Used
IV Adaptation

Each response should fall under one or more of these four parts of the outline.

The first part has three subparts:

THRESHOLD CONCERNS OF ADVOCACY
1. Defining Your Goals in Order
2. of Priorities.
2. Deciding When to Intervene.
3. Determining Whether You are Taking it all too Personally.

1. Defining Your Goals in Order of Priorities

The trainer could begin with response number 11 (hereinafter the responses will be designated as "R" plus the number, *e.g.*, R#11).

> R#11: "I'd ask myself which is more important: to avoid a hassle or to confront the operator to get what I want."

What is R#11 trying to get at? All of the trainees should try to formulate an answer to this question. R#11 appears to be addressed to priorities and to goal-setting. What am I trying to accomplish (goals) and which goals are more important (priorities)? This is not to say that the other thirteen responses fail to consider goals and priorities. These factors may be implied in any of the responses. It's simply that the person in R#11 wanted to think about goals and priorities *before* he decided upon a course of action. The trainer should allow the trainees to "kick" this concept around for a while and then conclude with the following:

Threshold Principle of Advocacy: *BEFORE THE ADVOCATE ACTS, HE SHOULD DEFINE WHAT GOALS HE IS TRYING TO ACCOMPLISH AND SET A PRIORITY TO THESE GOALS.*

In the hypothetical, there were two simple interrelated goals: (1) getting to the meeting on time and (2) using the elevator in the manner that he wanted to use it. The trainer may want to give some other examples of when this principle of advocacy is applicable, or better yet, he may ask the trainees to come up with such examples. Keep the examples non-legally oriented. The connection between the principles, the law and the legal service office will come later. Here, the catch words are *GOALS* and *PRIORITIES*. As the training progresses, such words should automatically "click" in the minds of the trainees in *any* fact situation. The catch words are a way to recognize the concern or the issue with relative ease. By the end of the training, a large number of such words or phrases will be developed so that the trainees are building outlines with them. Start slow at the beginning to let the trainees know where you are headed. Once everyone is on the same wave length, the composition of the final outline should proceed rapidly.

2. Deciding When to Intervene

Most of the responses indicated immediate action. Several others, however, did something different.

> R#6 "I'd just wait till he's ready and when he finally takes me up and I have had my meeting, I'd find out who his boss is and complain."
>
> R#10 "I need more facts before I could tell you what I would do. For example, did the operator have an attitude? Was it after 5 PM when he was about to go off duty?"
>
> R#11 "I'd ask myself which is more important: to avoid a hassle or to confront the operator to get what I wanted."

The trainer should ask the trainees what these three responses have in common. What did they do that the other responses did not? The answer is that these responses added another step to the advocacy process: they made a preliminary or threshold determination of whether the circumstances warranted immediate action or whether more appropriate action should come later. The delay could be caused by a number of factors: you want time to get more information (#10); you wait as a matter of strategy in order to be more decisive later (R#6), or you are simply not sure yet what course to follow (R#12 and R#10). The point is that you must decide *WHEN TO INTERVENE.*

Threshold Principle of Advocacy

BEFORE THE ADVOCATE ACTS, HE SHOULD DECIDE WHETHER THE MOMENT IS RIGHT TO DO SOMETHING, i.e., TO INTERVENE.

The key phrase is *"WHEN TO INTERVENE."* This is not to say that all of the other responses failed to consider the issue of when to intervene; it is simply that R#6, R#10 and R#11 openly thought about this issue more so than the other responses indicated.

Again, other examples of this principle in non-legal settings should be discussed before moving to the next principle.

3. Determining Whether you are Taking it all Too Personally

R#3 "I'd tell the bastard to move!"

R#9 "I'd tell him that I'm not accustomed being late for important meetings."

Ask the class what these responses are saying. What do these responses indicate as the "real" concern of the people uttering these responses? The answer is that the entire situation is being taken personally. The person is getting hot under the collar. The anger of R#3 and the arrogance of R#9 indicate that the situation is not being looked at objectively. In more crude language, what is happening is that you have perceived the operator as your personal enemy and:

> You are taking *his* shit (as you see it) and making it your own.

You are letting him control your feelings; you are letting him threaten your image of yourself; you are letting him insult you. There is potentially "too much of you" in the situation; your emotions are controlling your response. This is not to argue that it is inappropriate for an advocate to be emotional; it is simply to point out that the advocate should be aware of when he has injected his own personality into the picture. As we will see later, anger can be a valid advocacy tool. The concern at this point is to get the trainees to realize when their head is being dominated by their feelings at the risk of loosing objectivity.

This topic is one of the most delicate in paralegalism, as in all of human behavior. When the trainee is finally hired by the office, and someone tries to criticize or even comment upon his work, a natural inclination is to take the comments personally as an insult. Although this is a problem of supervision and personnel management, the principle of advocacy is still applicable. The trainer may want to create some hypothetical situations involving the issue in a personnel context to make the point again that basic advocacy skills have direct relevance to common everyday experiences and are not in the exclusive domain of law and lawyers.

Threshold Principle of Advocacy:

THE ADVOCATE SHOULD ALWAYS BE AWARE OF WHEN HE IS TAKING A SITUATION PERSONALLY AS OPPOSED TO DEALING WITH IT OBJECTIVELY.

Section C. Classifying or Translating the Responses into Advocacy Principles: Advocacy-Pressure Skills

Having dealt with the threshold concerns, the problem now is providing a framework with which to classify advocacy skills. What different types of skills are there? One common characteristic of all of the actions indicated by the responses is that advocacy operates through *PRESSURE*. The goal of advocacy is to decide when it is proper to act, and when you decide to act, to determine what kind of *PRESSURE* is needed. A basic principle of human behavior is that people are given to inertia and/or that when people do move, they do so along pre-determined, often unthinking, paths. *PRESSURE* is the instrument of change. *PRESSURE* is not necessarily a bad word. There is effective as well as inappropriate *PRESSURE*. The goal of the advocate is to *locate the stress points, the points that are susceptable to give-and-take, the weak links, the maneuverable corners,* and to apply a particular strategy thereto.

Advocacy Principle: *ADVOCATES BRING ABOUT CHANGE THROUGH THE EXERTION OF PRESSURE.*

How does the trainer teach this, other than simply to say it, to lecture on it? It may be that this particular point can only be taught by lecture. The trainer should try, however, to see if any of the trainees can come up with the concept of *PRESSURE* before he articulates it for them. He may do this by asking the trainees to define what they mean by advocacy to see if any of them come close to or directly hit the concept. The trainer may ask the trainees to re-examine all of the fourteen responses and determine what all of the responses add up to. If this does not work, lecture!

What are the different kinds of advocacy or pressure? How can they be categorized so that the trainee can get a handle on the options available to him as an advocate?

Back to the elevator example:

R#5 "I'd get off the elevator and walk up."

There is an old saying that if you can't solve a problem, redefine it. The trainee who came up with the response originally had the problem of how to use the elevator to get where he wanted to go, when he wanted to go. He could't solve this problem, so he substituted another problem: how to use the staircase to get where he wanted to go, when he wanted to go. In one sense, this response can be interpreted as defeatist, as an abandonment of his objective. In another sense, however, the response can be seen as a clever realignment of the factors involved. The response makes eminently good sense if it is clear that the staircase door is right next to the elevator and the meeting room is only one flight up. The trainee has eliminated the problem of the elevator operator and substituted the problem of finding out how easy or difficult it would be to use the stairs. On balance, this might have been the wiser course to take.

Advocacy Principle: *IF YOU CAN'T SOLVE A PROBLEM, REDEFINE THE PROBLEM TO MANAGEABLE PROPORTIONS IF ON BALANCE IT IS CONSISTENT WITH YOUR OBJECTIVES.*

Admittedly, this is not an easy principle to understand, teach or apply. Of the fourteen responses to the original elevator hypothetical, R#5 comes closest to exhibiting it. But R#5 is a weak example because of the fact that it is too easy to interpret R#5 as no advocacy at all rather than as a sophisticated technique of advocacy. Other hypotheticals might be provided at this point to make the concept clearer:

> Mrs. Jones has a child at the Foster elementary school. The school starts an experimental reading program and Mrs. Jones tries to have her child enrolled. She meets resistance. She learns that there is another elementary school in the same school district that has the same reading program available to all pupils. She then tries to have her child transferred.

Mrs. Jones has substituted one problem (how to get her child enrolled in Foster's program) for another problem (how to get a transfer). On balance, this may be the best course of action to take if she determines that it is not worth fighting Foster, if the other school is not too far away and if the transfer is relatively easy to bring about and not otherwise harmful to her child.

> R#2 "I'd ask the operator if he has to wait until more than two people are on the elevator before he can move."

Ask the trainees what's behind this approach. R#2 is really asking the operator if he is abiding by some rule and if so, to tell him what the rule is. Has the operator been told by his boss not to take off with just one or two passengers? Is there any time limit to the wait? Are there any exceptions to the rule? R#2 is asking the operator to demonstrate some *authorization* for his action or for his inaction.

Advocacy Principle: *ADVOCATES CAN ASK FOR (OR INSIST ON) SOME AUTHORIZATION TO JUSTIFY THE BEHAVIOR THEY OBJECT TO.*

R#2 also exhibits another principle of getting people to change. Depending upon the tone with which R#2 is uttered, there is a touch of belittling in the response. R#2 can be uttered in such a way as to make the operator look silly. "It's dumb to have a rule that one or two people cannot go up alone!" The technique here is trying to get action through embarrassment. This is not to say that such a technique should always be used or is always effective. It is simply to point out that it is not uncommon for people to try to get things done by causing embarrassment. The effectiveness of the technique is not an issue at this point in the training. The goal is to try to identify as many techniques as possible.

Advocacy Principle: *ADVOCATES SOMETIMES TRY TO GET ACTION BY EMBARRASSING THOSE THEY ARE TRYING TO GET ACTION FROM.*

R#6 "I'd just wait till he's ready and when he finally takes me up and I have had my meeting, I'd find out who his boss is and complain."

R#12 "I'd first tell him to move and if he refused, I'd go find the manager."

What's the advocacy technique here? Everyone has a boss somewhere and this boss usually has the power to overrule a decision of his subordinates. You can appeal to individuals up on the *"chain of command."* R#6 indicates a desire to take this appeal after the damage is done; R#12 wants the appeal immediately.

Advocacy Principle: *IF YOU CAN'T GET SATISFACTION FROM SUBORDINATES, TAKE YOUR COMPLAINT UP TO SOMEONE HIGHER ON THE CHAIN OF COMMAND.*

The plot now thickens. If the individual tries to go up the chain of command, a whole new set of advocacy principles may be adopted. You might use the technique of *EMBARRASSMENT*, or you might demand that the boss demonstrate to you what *AUTHORIZATION* or rule *he* is following in permitting the elevator operator to do what he does, or you might go further up on the *CHAIN OF COMMAND* if this boss gives you no satisfaction.

R#1 "I would begin to stamp my foot to let the operator know that I'm waiting for him to move."

R#3 "I'd tell the bastard to move!"

R#9 "I'd tell him that I'm not accustomed to being late for important meetings."

R#12 "I'd first tell him to move, and if he refused, I'd go find the manager."

Anger is a very common way that people go about trying to solve their problems. The trainee needs to understand when he is using this technique in order for him to be able to decide intelligently whether he wants to use it.

Advocacy Principle: *ANGER IS A COMMON WAY BY WHICH PEOPLE TRY TO GET THINGS DONE.*

R#4 "I'd explain to him that I'm in a hurry and that I'd appreciate it if he would take me up."

Sometimes the simplest way to get something done is to ask for it; put your cards on the table and see what happens. There may really be no problem at all.

Advocacy Principle: *ADVOCATES CAN TAKE THE UNCOMPLICATED APPROACH OF PUTTING THEIR CARDS ON THE TABLE AND SEE WHAT HAPPENS.*

R#9 "I'd tell him that I'm not accustomed to being late for important meetings."

R#13 "I'd ask him if he really thinks he's serving the public by making me wait."

Here the technique is plain and simple: you *preach* to the operator. You *tell* him what he should be doing; you *lecture* him. The lecture can either be direct (R#13: you should provide service) or indirect (R#9: you shouldn't make people late for meetings).

R#9 is admittedly not as good an example of preaching-lecturing as one might want. The trainer may have to stretch a point a bit to fit R#9 into the skill. It is to be anticipated that not all of the responses will absolutely fit into a particular category. A single response often has shades of a number of skills. There is nothing wrong with admitting that certain responses are difficult to categorize so long as the trainees do not feel that the trainer is being dishonest with them and so long as they are aware of the direction in which he is headed.

Advocacy Principle: *ADVOCATES SOMETIMES PREACH AND LECTURE TO GET THINGS DONE.*

R#7 "I would try to engage in some 'chit-chat' with him such as 'nice day isn't it' or 'have you had a busy day' in order to see if this wouldn't get him to do something."

Advocacy Principle: *ADVOCATES SOMETIMES PLAY THE ROLE OF BUDDY OR SUPERFRIEND TO TRY TO GET ACTION.*

R#8 "I'd try to get friendly by asking him if I could get him a cup of coffee on my way down after the meeting 'which started fifteen minutes ago.'"

Here the trainee is saying: I'll do something for you, if you do something for me. In the worst of situations, this is called a bribe. In a more realistic sense, this is called "scratching each other's back" or setting up a "quid pro quo" which means "something for something."

Advocacy Principle: *ADVOCATES REALIZE THAT IT IS SOMETIMES NECESSARY TO DO SOMEONE A FAVOR IN ORDER TO GET A FAVOR.*

> R#14 "In a quiet voice, I'd say to the stranger who just walked in, what do you think he's up to?"

What's the person trying to do here? He's trying to get the stranger to get involved. He's hoping the stranger will say something to the operator. He's either trying to get some *support* from the stranger and/or he's trying to get the stranger to *do his advocacy for him.* It can be argued that he is indirectly asking this third party to be his advocate. Hence two principles of advocacy emerge from R#14:

Advocacy Principle: *AN ADVOCATE CAN TRY TO GET THE SUPPORT OF THIRD PARTIES IN MAKING HIS CASE.*

Advocacy Principle: *AN ADVOCATE CAN TRY TO GET A THIRD PARTY TO BE HIS ADVOCATE DIRECTLY OR INDIRECTLY.*

This then covers all fourteen responses. If there were more responses, then perhaps the list of advocacy skills would expand. The above list is by no means meant to be exhaustive of the elevator example or of any other example that might be used.

Here is a summary of the advocacy skills mentioned above, plus several others that could have flowed from hypotheticals used:

-"Put your cards on the Table:" be direct and completely above board in telling the agency official what your position is and what you want.

-"Demand Adequate Service:" point out to the agency official that the purpose of his organization is service and that this principle should guide its actions.

-"Seek the Support of Third Parties:" before you make your position known, gather the support of individuals or groups within or without the agency so that you can demonstrate that you are not alone.

- "*Be a Buddy*:" show the agency official that you are not his enemy and that you respect and like him and that you are aware of how difficult his job is.

- "*Find the Points of Compromise*:" ferret out the negotiable points in the dispute and determine whether you can bargain your way to a favorable result.

- "*Insist on Common-Sense*:" convey to the agency official the impression that common-sense dictates the position you are advocating in addition to or in spite of the regulations or technicalities that might be cited.

- "*Demonstrate the Exception*:" insist on the uniqueness of your client's situation so that the general rule cited by the agency official to deny your client a benefit is shown to be inapplicable.

- "*Uncover the Realm of Discretion*:" take the position that rules don't exist until they are applied and that in the application of rules, agency officials often have wide discretion in spite of their claim that their hands are tied by the rules.

- "*Ask for Authorization*:" insist that the agency official show you the regulation, law or authority which supports the action he has taken or proposes to take.

- "*Cite the Law*:" show the agency official that you know what administrative regulations apply to the case (and in some instances you also cite to statutes and cases to demonstrate your point.)

- "*Redefine the Problem*:" If you can't solve a problem, redefine it, if you can still achieve what the client seeks, *e.g.*, stop trying to qualify the client for program "Z" if program "Y" will serve him equally well and the problems of qualifying him for "Y" are not as great as those encountered in continuing to insist on "X".

-"*Anger/Hostility*:" although this is a dangerous tactic to employ, it is a fact of life that some people respond to this kind of pressure.

-"*Preach*:" perhaps the most common way in which people try to change other people is to lecture them, to tell them what they should or should not be going.

-"*Climb the Chain of Command*:" everyone has a boss who can overrule decisions made by those beneath him. When you are dissatisfied with the decision or action of an employee, "appeal" or complain "up the chain of command" to the supervisor of the employee, and to the supervisor of the supervisor if needed.

-"*Embarrass Him*:" show the agency official that you do not respect him in such a way that makes him look silly.

-"*Make Clear that you and your office are going to Fight this Case all the Way Up*:" make the agency official aware of how important this case is; when you and your office have the grounds to back you, point out that you are thinking about taking the case to a formal hearing, and if necessary, to court.

-"*Do a Favor to Get a Favor*:" be willing to do something (within reason) for the person from whom you are asking something.

Once all of the skills have been identified in the initial hypothetical, the trainer should begin to drill the trainees on skills identified. He should use a large number of hypotheticals and have the class call out the techniques or skills used. A written assignment might be given with the same objective in mind. Before moving to the evaluation of the skills, he should be sure that all of the trainees are well versed in identifying skills and in mastering the catch words and the substance behind the catch words. Once these drills have demonstrated that the trainees can do this, they are ready for skills evaluation.

The third part of the basic skills checklist is *Evaluation.*

Section D. Classifying or Translating the Responses into Principles of Advocacy: Evaluation

In stating the advocacy principles above, little attempt was made to pass any value judgment on any one particular technique. The advocate must, however, evaluate the effectiveness of the technique he has used or is thinking about using. Ask the trainees how they would test effectiveness. Some possible questions that the advocate needs to ask himself are:

1) In using this particular technique are you making your position clear?

2) In using this technique, are you creating more problems than the one you are trying to solve?

3) Do you feel that this technique is working; is it accomplishing its goal?

It is at this stage in the training when the trainees are asked to evaluate the relative effectiveness of the techniques used in the elevator hypothetical in the light of questions such as these three. As a matter of common sense, which techniques appear to be the best? From the sequence taken above, the trainer should have the following skills listed on the blackboard or on a plainly visible sheet of paper:

1. Redefine the Problem
2. Ask for Authorization
3. Embarrassment
4. Chain of Command
5. Demand Service
6. Anger
7. Cards on the Table
8. Preach
9. Be a Buddy
10. Do a Favor to Get a Favor
11. Support of Third Party
12. Third Party as Your Advocate

Several others were also mentioned:

13. Find the Points of Compromise
14. Insist on Common Sense
15. Demonstrate the Exception
16. Uncover the Realm of Discretion
17. Cite the Law
18. Interpret the Law
19. Make Clear that the Case is Important to You

In general, how would the trainees rate the effectiveness of these twelve advocacy skills? One such priority list might look like the following:

1. Cards on the Table
2. Service
3. Ask for Authorization
4. Chain of Command
5. Insist on Common Sense
6. Find the Points of Compromise
7. Uncover the Realm of Discretion
8. Demonstrate the Exception
9. Cite the Law
10. Interpret the Law
11. Buddy
12. Make Clear that the Case is Important to You
13. Redefine the Problem
14. Do a Favor
15. Third Party as Your Advocate
16. Support of Third Party
17. Preach
18. Embarrassment
19. Anger

What priority list do the trainees have? A wide divergency of opinion should exist among the group. The trainer should let the discussion get "hot." On what basis do individual trainees make their lists? What common-sense principles of human behavior (*e.g.*, if you antagonize someone you will probably make matters worse, *etc.*) would they apply to determine effectiveness?

Section E. Classifying or Translating the Responses into Principles of Advocacy: Adaptation

To determine whether the trainees have been able to identify and evaluate the advocacy skills, the principle of *ADAPTATION* or *FLEXIBILITY* is tested.

Advocacy Principle:	*ADVOCATES SHOULD BE ABLE NOT ONLY TO UNDERSTAND WHAT TECHNIQUES THEY ARE USING, BUT ALSO THEY MUST BE ABLE TO SHIFT FROM ONE TECHNIQUE TO ANOTHER WHEN THEY DETERMINE THAT A TECHNIQUE IS NOT WORKING.*

The ways to test the ability of trainees to master the principle of *ADAPTATION* are as follows:

1) role playing (see chapter eight, *infra*);

2) in controlled situations, provide the trainee with real problems involving advocacy and watch for the signs of flexibility (clinical education).

3) ask the trainee to recall present or past experiences in his own life that involve a shift in advocacy techniques. (*e.g.*, last night a problem came up involving my neighbor and what I did was...., *etc.*)

At the end of this text (following chapter twenty-two) on the inside cover, there is a chart which provides a summary of advocacy skills involved in problem solving. (Item V in the chart will be discussed in chapter ten *infra.*) Again, it is not an exhaustive list. It is a list that grew out of the elevator hypothetical and the class discussions based upon it. The chart will be constantly referred to in the remaining chapters of the text with the following questions in mind:

1) In how many different situations (*e.g.*, interviewing, investigation, conducting hearings, writing, *etc.*) does the chart apply?

2) In each different situation, does the chart need to be added to or subtracted from?

3) Is there need for a different priority list of effective skills? If so, why?

4) Is the chart useful in helping the paralegals develop their manuals?

5) Is the chart useful in helping the paralegals understand and apply advocacy principles?

EVALUATION SCORE CARD

Another vehicle that can be used to obtain the same objective of getting the trainees to identify advocacy techniques themselves is the Evaluation Score Card (ESC).

The ESC can serve a number of purposes:

1) Sharpen the observational powers of the trainees;
2) Help them to be self-conscious about what they do, without immobalizing them;
3) Help them to identify advocacy techniques;
4) Help them to develop standards by which they can evaluate advocacy techniques.

ESC works as follows: the trainer prepares a ten to fifteen minute role-playing experience involving an agency official and a paralegal. The trainees are distributed a form, the ESC, which they are to use to assess the role-playing that they will be observing. Class members are used as role-players. (The trainer himself may want to play one of the roles to insure that the sequence goes where he wants it to go. After this exercise has been performed a few times, however, the trainees will be able to do most of the role-playing under the general direction of the trainer since they will be familiar with the overall objective of the assignment.)

The ESC is printed on the following page.

Evaluation Score Card

(The aim of this form is to record your evaluation of the performance of the paralegal.)

1. What advocacy technique did the paralegal start out using?

____

____

____

____

2. On a scale of 10, how effective was this technique? ("10" is very effective; "1" is very ineffective.) ____________________

3. When the sequence ended, what advocacy technique was the paralegal using?

____

____

____

____

4. On a scale of 10, how effective was the overall performance?

____

____

____

5. According to the agency official, what was the problem? ______

____

____

____

6. According to the paralegal, what was the problem? __________

____

____

____

7. What, if anything, was standing in the way of communication between them?

8. How could this communication problem have been overcome?

9. Was the paralegal objective about everything, or did he take anything personally? Explain.

10. Was the agency official taking anything personally? Explain.

11. If the agency official took anything personally, how did the paralegal deal with this?

12. What do you think the paralegal should have done about this?

13. Describe the most positive aspects of what you saw the paralegal do.

14. Describe the least effective aspects of what you saw the paralegal do.

15. As specifically as possible, list all of the advocacy techniques ("good" or "bad") that you observed in the paralegal which you have not already mentioned in any of the above 14 questions.

Several hypotheticals are suggested here for role-playing and for utilization of the ESC:

Caseworker wants to terminate the welfare assistance of Mr. Jones because of an alleged failure to look for work diligently. Mr. Jones claims he has been sick. The paralegal represents Mr. Jones. He calls the caseworker on the phone to try to resolve the problem. (In the role-playing, the participants pretend that they are on the phone.)

John Smith has been to the XYZ drug rehabilitation program. He applies for welfare while he is at the program. The caseworker calls the XYZ program to ask if John attends regularly. They answer "no". John tells the caseworker that he may have missed a few days, but he is there most of the time. The caseworker tells John that he does not qualify because he is not a regular member of a rehabilitation program. John goes to see the paralegal. The paralegal visits the caseworker.

Mary Thomas is 35 years old, separated from her first husband, and living in an apartment with three children, ages 2, 5 and 14. The 14 year old, Jane is illegitimate. Mary's husband, Tom, lives in the same city and occasionally visits and gives her money for the children but refuses to give her money for herself.

Mrs. Thomas is on welfare (Aid for Dependent Children.) Last week, a welfare worker dropped in unexpectedly while Tom was in the house and saw him there. On the way out the welfare worker met Jane, (14 years old) in the front room and said "I just saw your father". Jane said "That's not my father". The worker came

> the next day to the apartment and gave Mr. Thomas a piece of paper, saying "this is a notice of termination of welfare. You have a man living in the house and he could support you, so we are not going to pay you any more welfare." Mrs. Thomas goes to see a paralegal and tells him that her husband only rarely comes by and never gives her any money. The paralegal calls the caseworker to try and straighten out the difficulty.

The ESC and such hypotheticals for role-playing are used to get the trainees to begin to talk about advocacy, to identify it when they see it and to formulate some rough evaluative criteria based upon their experiences, common sense and "feel" for good judgment.

Chapter Eight

Role-Playing: How to Use It Effectively

Role-playing is a learning process wherein the participants act-out their responses rather than simply verbalize them in the classroom. As such, it is totally consistent with the general theory of training which emphasizes the concrete and recoils at undue reliance on the abstract.

Before exploring this technique in detail, it may be helpful to look at the arguments *against* role-playing.

Section A. The Case Against Role-Playing

1. Games are fun for the first thirty minutes, but soon become a drain.

The argument here is that role-playing can create an initial atmosphere of interest and enthusiasm, but that it wears off relatively soon.

2. Role-playing can't teach you the law.

Paralegal trainees might resist role-playing in their anxiety to be taught the law. It's not easy to see how role-playing can teach the law.

3. Role-playing is chaos.

Role-playing has a way of living a life of its own. The situation can quickly get out of hand. Tangents can dominate the proceeding.

4. The effect of role-playing can't be evaluated.

So much happens during role-playing sequences that it's sometimes difficult to follow and often difficult to remember everything that has happened. One ends up with general impressions, rather than conclusions that you can get a handle on.

5. Role-players can fool you.

While the trainer may ask a trainee to "act-out" a position rather than simply talk about it in the abstract, the role-player may in fact simply repeat his abstractions as an actor as opposed to "living" his position in a semi-real environment.

The short answer to each of these five criticisms is that they are addressed to *ineffective* role-playing rather than to the nature of role-playing itself as a learning device.

Section B. Role-Playing as an Advocacy Technique

Role-playing can be viewed as a highly specialized learning technique or as something that we naturally do every day. According to the latter, role-playing is the adoption of a particular style, tone or manner in order to provoke someone into a desired response. Suppose that a married couple is thinking of buying a house. One of them finds a house and wants to make a convincing argument to the other member of the team to buy it. There are a number of roles that this spouse can adopt to make this argument:

SPOUSE WITHOUT DRAMA:	"I think we should buy this house."
SPOUSE AS MORALIST:	"God intended me to live in this kind of house."
SPOUSE AS FANATIC:	"If we don't buy this house, I'll kill myself."
SPOUSE AS ECONOMIST:	"Just think of the large interest deduction and resale value that this house has."
SPOUSE AS OPPRESSED MINORITY:	"I've just about had it. Everyone else has a fine home and I'm stuck without one. This house will solve everything."

The list, of course could go on and on. Which posture represent "the real" spouse? It's obviously difficult to determine. All of us are capable of a multitude of roles. When a paralegal consciously adopts a particular technique on the job (*e.g.*, Be a Buddy.) he is role-playing. The assumption of roles (sometimes called masks) is a very common occurrence in social as well as in work settings.

Section C. Role-Playing is Discovery through Commitment

As seen in chapter four, *supra*, a major problem with traditional classrooms is that they are divorced from real experiences. Everyone is rationalizing about everything. Role-playing is a major way to attempt to offset this.

The premise is simple: You get the trainee to *commit* himself to a particular situation; you set up a response to this position (via another role-player) and you watch to see what happens to the original position. Is the trainee defensive, consistent, confused, flexible, successful, *etc.*? You have this trainee analyze what has happened to him and to his position. What took place? What did he see about himself? What does he now think of his original position? If he had the same situation again, would he handle it differently? Why? These questions come alive for the trainee when he has *committed* himself through role-playing.

This is not to say that none of the above could have been achieved without the role-playing. The trainer could have simply presented a problem and asked the trainer "to talk about" the position he would take to respond to the problem. By incisive questioning, the trainer could have forced the trainee to be defensive, consistent, confused, flexible, *etc.* This approach (which is also a game), however, is less likely to take hold than the role-playing approach. It is perhaps impossible to prove this, except to say that the trainee is probably more involved in the role-playing than in the intellectual question-and-answer process, and that generally, people tend to learn more from situations that they are caught up in or involved in.

Does this mean that everything should be learned through role-playing? Certainly not. It would be false to argue that you can't learn something unless you have experienced it. *Role-playing is most effective in the beginning stages of learning something new.* It's a way to get things going. It's a way to involve the shy student. There is a distinct danger in overkill if the entire training program is nothing but a long series of role-playing sequences.

You may find that role-playing is of primary relevance to *form* rather than to *content*. It helps the trainee to look at his style, his approach, "how he is coming off." It also helps to teach "content," such as how to employ a particular skill, but it does so primarily by giving the trainee the opportunity to see the entire picture, to assess how he goes about using all his abilities and disabilities in problem solving. The discovery that can come through role-playing is primarily related to the type of person he is, and secondarily to the specific topic under analysis. Both style and topic (form and content) are crucial, but it is not necessarily the case that both can be best dealt with through role-playing *all the time*.

Because role-playing provides a forum for self-reflection, it is of particular use to teaching through the learner-focused method where the starting point is always the trainee.

Section D. Control vs. Spontaneity

The great appeal of role-playing, according to one view, is that it offers a forum for spontaneity wherein discoveries, otherwise unobtainable, are realized. From another perspective, it can be argued that role-playing is an intensely manipulative process wherein the trainer positions the trainee into accepting approaches that he does not believe. There is considerable truth in both of these statements. ROLE-PLAYING IS STRUCTURED OR CONTROLLED SPONTANEITY.

The obvious question that follows from this is: how can spontaneity be meaningful if it is controlled? Part of the answer is that role-playing is something less than free-association where, theoretically, anything goes. Role-playing does not go this far. There is a structure to role-playing, or there should be if chaos is to be avoided. The trainer needs to have in mind the direction he wants the class to take and not permit the role-playing sequence to take the class in another direction or to take the class in a direction that is too far afield from his originally intended path.

There is a difference, however, between controlling *the topic* or general area, and controlling *what the trainees have to say* about that topic or area. Role-playing that does the latter is obviously improper. If the way in which the role-playing is set up sends a message to the trainee that he is expected to act in a certain way even though on the surface he is being asked to respond "naturally", then the role-playing is dangerously false. This is different from asking a trainee to play the role of an irate clerk, for example. He is being properly asked to take a certain posture *as he reads it*. He should be asked to give *his* interpretation of how an irate clerk would act in the circumstances provided. Here you are controlling the topic, but not the substance of the response. There can be valid spontaneity as to the latter even though the general direction of the discussion is being controlled by the trainer.

Section E. What to do when the Trainer's Mental Picture of What Should Happen is Destroyed by What in Fact Happens.

Although over-control is a problem, a more pressing concern is when the trainer loses control. Suppose, for example, that the trainer wants to cover the threshold advocacy problem of the advocate losing objectivity because he is taking the situation personaly. He picks a trainee and creates a situation which he hopes will raise the issue. For example:

> The trainer plays the role of a school teacher. The trainee is asked to play the role of a parent. The teacher calls the parent and says: "Your son is having problems at school and I'm sure that it's because of his home environment."

The trainer is counting on the trainee to get angry and insulted in order to be able to discuss with the class the implications of anger and emotionalism generally in an advocate. To the trainer's chagrin, the trainee, as mother, responds thusly:

> "I would prefer not to discuss this with you. I'm going to discuss the entire matter, including your attitude, with the principal."

What is the trainer to do? This is *not* the response he was looking for. The response of the trainee raises another point: the *chain of command* advocacy technique, but the trainer did not want to deal with this topic at this time. The trainer either has to take some drastic steps to get the class back on track or he must decide whether or not to permit a new track to be taken. Unfortunately most trainers freeze at this point. The value of staying with the chain of command topic is that the trainee came to it spontaneously and this is always an excellent time to deal with it. The problem, of course, is that the trainer may have wanted to cover other areas before he got to the chain of command point. Staying with it at this time would be disruptive of his overall training plan. The trainer must instantaneously balance the factors on both sides and make a decision.

If the trainer decides to stick to his original topic, then he has several options:

1) He could drop the first trainee and try to find a "better" response. He would ask someone else to respond to the same situation to see if he can get a response that will give him enough "meat" on the personality issue. He could keep switching until he finds the "right" response. If time is becoming a problem, he may simply ask the class as a whole: "Does anyone have a different response?"

2) Instead of trying to erase from everyone's mind what the original trainee said, he could try to get another trainee who has a response more along the lines of what he was looking for and ask the class to compare the two approaches.

3) As a final resort, the trainer could play the role of mother himself (play both roles); come up with a response which is very emotional and then ask the class if they see any problems with his approach.

Section F. Degrees of Role-Playing

The range of possible role-playing sequences is very broad:

1. You could run a sequence involving a very broad topic (*e.g.*, administrative hearings), and a large number of role-players. Such a sequence could last an entire day.

2. You could pick a very narrow topic (*e.g.*, finding out if a client is eligible for legal services) involving only one or two people and requiring a relatively short time to conduct.

3. The sequence could be so brief as to almost be parenthetical (*e.g.*, the trainer is talking about a particular point; a trainee raises his hand and says "I don't see it that way;" the trainer stops the flow of his discussion and says to the trainee: "suppose you were in this situation and the following things happened , what would be your response;" the trainee responds; there is a brief discussion of the point and the trainee proceeds with his presentation. In this case, the role-playing would have taken only about two or three minutes).

You will often find that the shorter, more direct role-playing sequences are the most effective. Don't use more than a few long, complex sequences. It's too easy for them to get out of hand.

Section G. General Techniques of Role-Playing

1. Media

It would obviously be highly beneficial to have access to video tape equipment. What better way to permit the trainees to see and "feel" themselves in action? Since such equipment would probably be impractical because of cost, a less expensive and less cumbersome tape recorder should be considered. A tape recording is often an excellent way to start off a training day. Use it for the first role-playing sequence. If you try to use it for every sequence, you will find that it will wear out its welcome and utility. It can be time-consuming to replay everything or even to find the spot on the tape that you want to replay.

2. Find a Foil.

A cardinal principle in using role-playing effectively is to use it in a situation of conflict. One trainee says the best way to do something is by using a particular approach. Find out if anyone disagrees. If you find such a someone, then let each trainee role-play his approach in separate sequences involving the same fact situation and ask these trainees and the entire class to compare the two approaches. On any one point, there will almost always be a wide variety of approaches that the class would use. Ferret this conflict out and capitalize on it whenever possible.

3. Train the Secondary Role-Players.

Too often in some of the smaller role-playing sequences, the foul-up comes with the secondary role-players. The primary role player is the trainee around whom the sequence is centered. He has made the point that the trainer wants to see acted-out. Other secondary role-players, are selected to fill in the cast of characters These secondary role-players can destroy the sequence by being in a totally different world. They need to be schooled on how to play their part, unless you have set up a very broad role-playing sequence in which you *want* the characters to take the sequence wherever they want to. In the smaller, more controlled sequences, however, you will want to prevent this by giving careful instructions to the secondary characters. In the elevator example in chapter seven, *supra*, for example, the primary role-player is the individual who wants to go up on the elevator. The secondary role-player is the elevator operator. If someone was asked to play the role of the elevator operator and the primary role-player asked him to take him up and he did so promptly, the entire sequence would have been destroyed since no problem would have been presented. The elevator operator would have had to be told to refuse to go up or to simply do nothing.

This danger in using secondary role-players is so acute that it is often desirable to have the trainer play the role of the secondary character so that he can be assured, at the very least, that the problem is presented.

4. Role-Reversal

After a role-player has acted out his position, ask him to play the role in a manner exactly opposite to the way in which he originally presented it so that he can gain an added prespective.

If the role-playing sequence involves charcters on two ends of the spectrum (*e.g.*, a welfare recipient and a case worker) ask the trainee to play both roles in the fact situation. First the trainee plays one character; at the end of the sequence or in the middle of it, ask this same trainee to play the role of the "other side". Again there is considerable value in permitting the trainee to observe the problem from another dimension. Excellent topics for discussion can flow from such experiences.

5. Point!

You may not want to let every sequence be carried to its logical end. They can become too long and complicated. In some role-playing, you may want to try the "point" system. Give each non-participant in the role-playing sequence the right to raise their hand or say "point" at any time during the sequence. Let him make his comment (positive or negative); give the participants time to consider the comment (to adopt or reject it) and proceed with the sequence. Encourage the class to intervene in this way. To get it started, the trainer may want to stop the sequence to make points of his own. By so doing, he will make clear to the class what the process is all about. (It may be that some of the comments made by the non-participant trainees will be so incisive that the trainer will want to consider inviting the person making the comment to come forward, take the place of the primary role-player and act-out the sequence along the lines of his comment or point.)

The trainer must make sure that the comments or points are crisp and relevant; windy speeches would disrupt the sequence. Flexibility is the key.

Chapter Nine

Advocacy and Client Interviewing

Section A. Introduction

This chapter is not an attempt to teach every aspect of interviewing. It is an exploration of the extent to which the advocacy principles dealt with in chapter seven apply to interviewing generally and particularly to client interviewing in a law office.

Interviewing is the process by which one person obtains information from another person. When a client first comes into a legal service office, someone must talk to him in order to determine (a) what service he is looking for, (b) whether he is eligible for the services provided by the office and (c) whether the services of the office can help him. This is the *preliminary interview*, although the third determination may not be made until long after this first contact.

It is very likely, however, that this client will have numerous subsequent contacts with the office, and many, if not all of these later contacts will involve an exchange of information. Hence, interviewing should be conceived of as a continuous process starting with the initial contact and including every contact the client has with the office until the case is closed.

Section B. Advocacy in Interviewing

1) Interviewing is often much more complex than a mechanical recording of information.

2) Frequently, advocacy skills need to be employed in order to conduct an interview effectively.

How can these two major points be taught? Rather than simply announce these points to the trainees, use an example (or try role-playing) involving facts that will demonstrate both of these points and that will act as a springboard to a discussion on how advocacy skills can be used in interviewing.

Example #1: A high-school student comes to a teacher and tells her that he wants to quit school. She asks why. He answers that the other students are always trying to pick a fight with him.

Example #2: A client comes into a legal services office and says that she wants help to get a divorce. The advocate asks why, and the client says that her husband does not support the family.

In both of these situations, the information to be derived from the interview appears clear-cut: the reason the student wants to quit school and the reason the client wants a divorce. Suppose, however, that the reasons given have little or no basis in reality:

Example #1: The student, in fact, is extremely embarrassed, by his speech defect. This is the reason he wants to quit school. The reference to fighting may either be fabricated or simply not the real reason for his desire.

Example #2: The client is eligible for welfare but does not know it. Her husband may in fact be providing inadequate support, but if she knew that, she would apply for it and not pursue her request for a divorce.

If these are the realities, then it is the responsibility of the interviewer to uncover them, *which is to say that the interviewer must be an advocate in ferreting out information which is not clear on the surface.*

It's difficult to make this point in a role-playing sequence. The primary role-player in the school situation is the teacher (who is interviewing the student); the secondary role-player is the student. The primary role-player in the second example is the person interviewing the client. The secondary role-player is the client. The point made in chapter eight *supra,* about the necessity of carefully schooling the secondary role-player is painfully applicable in these two examples. The trainee playing the role of the student or the client must play the role properly in order to demonstrate the problem. The trainee must hold back information about the "real" reason for wanting to quit school or to get a divorce in order to see whether the primary role-player uses the proper techniques to get at the "real" reasons. If the student is too quick to blurt out that he has a speech defect that is bothering him or if the client blurts out that she would consider applying for welfare in lieu of pursuing a divorce, then the cases have not really raised any problems of interviewing at all. The secondary role-players must be told what the sequence is all about *in advance* of their participation. They must be schooled to provide the surface information and to give up the underlying facts or factors only if the primary role-players do enough prodding to uncover it. They should make it neither unreasonably difficult nor easy. They should play the role of the client, for example, as inarticulate and completely unaware of the welfare possibility.

If you determine that it would be too difficult to attempt the role-playing in this way, then you as trainer should take the part of the secondary role-players, or, you can by-pass role-playing for this topic and simply state the situations as examples. At all costs, *avoid* handling this topic by merely saying "in interviewing, what appears on the surface is not always a true picture of reality."

Section C. The Advocate's Approach to Client Interviewing

As indicated in chapter seven, *supra*, there are three threshold concerns that are the starting point. Of the three, the first and third are of primary importance in interviewing.

THRESHOLD CONCERNS

1. Defining Your Goals in Order of Priorities
2. Deciding When to Intervene
3. Determining Whether You are Taking it all too Personally

1. Defining Your Goals in Order of Priorities

It is absolutely critical for an interviewer to understand what information he is supposed to obtain in any interview. (If he is not clear as to goals, he should not conduct the interview.) Here is a good place for the paralegal to draft a checklist. If he is trying to determine eligibility for legal service, he should have, in checklist form, a list of questions that he will ask. For example:

How much income?
One Welfare?
Own own house?
Live in neighborhood?
etc.

He should have a chart that will tell him how much income will qualify and disqualify a client for free legal services.

As for priorities, the office will probably instruct the interviewer that he should not verify the statements made by the client about his income. This has a very low office priority. Most offices simply take the word of the client on income. If this were not the case, then the interviewer would have been instructed to seek some verification, *i.e.*, to give the matter a higher priority.

The facts, of course, can become much more complicated. Suppose that the office is assisting a client to file for personal bankruptcy. The interviewer must know how the bankruptcy process works. All of the questions asked of the client must specifically relate to some component of the bankruptcy process. The *goals* of the interviewer are to draw this relationship as thoroughly as possible. As for *priorities*, suppose that the paralegal is helping the client list all of his creditors. The client remembers "a small debt, a few years ago of a few dollars, but I don't recall it very well." What *priority* should the paralegal give to this item? How crucial is it to the overall objective of obtaining bankruptcy? The paralegal checks with his supervisor in order to determine what *priority* to give this matter in view of all of the other information that needs to be gotten out of the interview. If it gets a low *priority* then the advocate won't keep pressing the client to try to remember nor will he begin investigation of the matter on his own.

2. Determining Whether You are Taking it all too Personally

Here a role-playing situation could be very useful. It should involve the following kinds of situations:

1. During the interview, it becomes clear that the interviewer is a racist (try not to make this fact too obvious, however).

2. The client is a racist and his racism is directed at the interviewer. What does the interviewer do? Throw the client out? Get angry at the client? (Make clear in the role-playing that the client does have a genuine need for legal services in spite of the problem raised.)

3. The client has an extraordinary "B.O." problem.

4. While interviewing a client seeking a divorce, the interviewer asks the following question about prior marriage: "Are you sure that your prior marriage ended in a divorce before you married again?" The client answers, "What the hell are you asking me that for; aren't you suppose to be the expert on the law?"

5. The client has an appointment with the paralegal for an interview at 1 p.m. The client shows up at 3 p.m. and forgets to bring the papers that he was asked to bring. The advocate asks for an explanation and the client responds, "I've got too many things on my mind. Why couldn't you have come to my home for this interview?"

6. A twenty-year old girl comes into the office to ask for help in applying for welfare. She is single and has no children. She says she is sick. The interviewer suspects that this girl is "high" on drugs while in the office.

7. The client says to the advocate. "You're not a lawyer; I don't want to be interviewed by you.

If the trainer decides to role-play situations such as these in order to illustrate the problem of the interviewer loosing his objectivity because of a too-personal involvement in the situation, he should be sure that the primary role-player (the interviewer) is responding naturally rather than with false rationalizations. In some of the examples listed above, it would almost be impossible for the interviewer to fail to display his own feelings about the situation that confronts him in the interview. It is critical that these feelings be identified and discussed. This is not to say that the trainees are to be taught that when they are on the job they must hold back their own feelings and personality at all times. It is simply to argue that if the feelings are there, they must be dealt with. A start should be made in dealing with them in the training program.

Section D. Advocacy Skills in Client Interviewing

In chapter seven *supra*, we saw that there were a number of basic techniques that an advocate uses. Some of these skills are applicable to interviewing. Have the trainees refer to the chart of basic advocacy skills on the inside page of the back cover.

1. Cards on the Table
2. Service
3. Ask for Authorization
4. Support of Third Party
5. Chain of Command
6. Buddy
7. Redefine the Problem
8. Do a Favor
9. Third Party as Your Advocate
10. Preach
11. Embarrassment
12. Anger

Which of these techniques do the trainees think could be effective in client interviewing? Why? What are the potentially ineffective techniques? Why? Here is another opportunity for the trainer to assist the trainees in becoming technique conscious. When a trainee says that a particular technique would be appropriate or inappropriate, the moment is ripe for the construction of a hypothetical or a role-playing sequence. The trainees need to be drilled and re-drilled.

> The interviewer is talking to a client who wants a divorce because of adultery. The client is very hesitant about talking about the circumstances of her husband's adultery.

What does the interviewer do? Preach to the client about the necessity of talking about the event? "You *must* talk about it". Should the interviewer take this approach? The answer is not so easy. Give the trainee a chance to discuss this issue and to articulate his own visceral guidelines on it. Then have him put it down in manual (checklist) form.

Two techniques on the list that the trainees may feel to be particularly appropriate are:

(1) put your cards on the table and
(6) be a buddy

Translated into the interview situation, these skills become:

(1) honesty and
(6) courtesy

Ask the trainees how they would go about being honest and courteous. The key to effective advocacy in interviewing is TO GAIN THE CONFIDENCE of the client being interviewed. This is best achieved by conducting the interview in such a way that:

(i) the client feels that you are intelligently handling his case (this is so when you know precisely what goals you are after in the interview);

(ii) the client feels that you are above board with him (honesty); and

(iii) the client feels comfortable with you (courtesy).

Do the trainees agree? Set up some role-playing sequences to determine whether they in fact apply these principles.

What role do the trainees feel that PRESSURE has in the interview? Are the three points made above inconsistent with the use of pressure? What does the interviewer do when the information he is seeking is not easily forthcoming? He persists in seeking it. Is this pressure? Do the trainee think that an interviewer can exert pressure without being dishonest or discourteous? What is their definition of a diligent interviewer?

Section E. Evaluation and Adaptation

The final set of skills considered in chapter seven are assessment and flexibility: the interviewer should not be single-minded. He should not give up after his first approach does not prove fruitful. The tests for a particular technique are:

1. Are you making yourself clear?
2. Are you creating more problems than you are solving?
3. Are you accomplishing your goals?

The best way for the trainer to determine whether the trainees are effectively applying these tests and adequately shifting approaches according to instant self-appraisals is by watching them perform in carefully designed role-playing sequences. These points cannot be made in the abstract.

How does a trainee know when he has "really" achieved his goal and recorded *all* the information required? This problem becomes very acute in situations where the interviewer does not always know what information the client has, or the client does not know what information is relevant. What do the trainees think? Have them write down some of the tests that they would apply. Have them go through this exercise *before* the trainer suggests some tests of his own. They will relate to these suggestions more readily if they have first attempted to formulate some of their own.

There are no hard and fast rules on this. Possible guidelines (that could find their way into manuals) are:

1) The interviewer must keep an open mind;

2) The interviewer must be prepared for unexpected information;

3) The interviewer must always be on the alert for leads or "flags" which indicate that further prodding might bring forth a new line of information;

4) The interviewer must be able to interpret non-verbal forms of communication; slience, gestures, nervousness can be significant signs of information.

There are some excellent role-playing possibilities that can come out of these guidelines. (Trainees sometimes bring their young children with them to the training sessions. Consider asking the parent if the child would want to participate in a role-playing sequence. Have one of the trainees (other than the parents) interview the child about something that recently happended to the child, *e.g.*, he just started school. Before the sequence begins have the trainee explain to the class what goals he has for the interview. Then bring the child in the room for the role-playing. The potential for topics for discussion after the sequence are enormous).

Section F. Conslusion: Manual Fill-In

Once the trainer has finished the sessions on interviewing and advocacy, he should see to it that the main topics covered have been or are being translated by the trainee into guidelines, outlines and checklists. What does the original chart of advocacy skills now look like? Is there a different chart for interviewing? Is there a diversity in the guidelines, outlines and checklists formulated by the trainees on the topic of interviewing? If so, is this healthy? Do the trainees feel that they are actively involved in the training? Are their individual personalities being expressed or are they all being asked to conform to a mold? Have they begun to see that their uniqueness is key to job performance or are they embarrassed by what makes them different?

These are some of the tests to determine whether learner-focused training is working.

Chapter Ten

Advocacy and Investigation

This chapter is not an attempt to teach all of investigation. It is an exploration of the extent to which the advocacy principles dealt with in chapter seven *supra*, apply to investigation generally and particularly to field investigation out of a law office.

Section A. Advocacy Principles of Investigation

Two basic components of providing legal services are (1) the facts and (2) the law applicable to those facts. In a large number of cases, a law office does not have sufficient command of the facts before proceeding to pursue a particular legal course of action. This is true for a number of reasons:

(a) inadequate time is given to investigating the facts;

(b) the facts may change in the middle of a case without the office knowing about it;

(c) the office may not fully know what facts are relevant;

(d) people may be unwilling or unable to tell the facts to the office;

(e) written records can be incomplete, hidden or non-existent.

Effective investigation is designed to overcome these problems. The trainer should give early attention (1) to the conceptions of investigation that the trainees brought with them to the training program and (2) to the necessity of fully understanding the five problems listed above. It might be worth while to present a number of hypotheticals to the class in order to obtain their reactions. Ask the class: (a) if they ever had to deal with situations such as those presented below, (b) what did they do and (c) what things do they think they could have done? The latter two questions can be translated into "what investigating skills did you use" and "what other investigating skills do you think would be effective?" But don't talk about their responses in terms of skills yet; simply ask for commonsense reactions. Note that the following examples move from non-legal areas to legal areas; from self-advocacy to advocacy for others; and from the simple to the complex.

1. On September 1st, Tom decides that he wants to enter a Junior College. School opens in five days. There are only two colleges that still allow time for registration. Both are about the same distance from his home and he can afford both. Tom's problem is that he does't know enough about either college to make a decision. He works full-time from

> 9-6 and *must* continue to work right up to the first day of school in order to be able to finance his education. What should he do?

As the trainer gets the responses, he should note them on the blackboard in summary form. For example, if one of the trainees says he would call and ask the two colleges to send him their catalogues, the trainer should write the board "PHONE FOR WRITTEN INFORMATION;" if another trainee says that he would go to both colleges in the evening, write "SITE VISIT," *etc.* There should be a large volume of responses similar to these, some of which might be sub-categories of prior categories. Have the trainees write down these approaches themselves. After the trainer has gone through a few hypotheticals, the class should be ready to go back over their notes (in conjunction with what the trainer has placed on the blackboard) *and organize an outline of investigation skills which can become a preliminary checklist for the trainee to go into his manual for later use on the job and for alter revision.* For the time being, such a checklist-outline will be of a general nature. Later on, the outline should find its way into specific manual topics such as "investigation for welfare eligibility," "interviewing witnesses," *etc.*

2. Tom teaches a second-grade class. It is the end of school day on Friday and the bus is in front of the school ready to take about 1/2 of his class home. If the students are not out in time for the bus, it will leave without them. It is 2:50 p.m. and the bus is schuled to leave at 3:05 p.m. Tom discovers that his brief case is missing from the top of his desk. What should he do?

The hypothetical may be a good one to discuss a particular kind of pressure as an investigation technique. Some trainee might say that he would tell the class that if the briefcase is not returned, no one will leave for the bus. This would be an excellent opportunity for the class to focus on the use of *threats* to uncover the facts. When should it be used, if ever? What are the dangers? An entire guideline-checklist could be developed from this one topic alone.

3. Tom lives in Brooklyn. He has been interested in a job opening twenty miles away in New Jersey. On July 1st, he spoke to the personnel manager to talk about the job and arranged for a personal interview at 3 p.m. on July 24th in New Jersey. When Tom arrives on that date, he is told by the receptionist that the job is no longer open. On July 23rd, the Board of Directors fired the top administrative staff. The assistant personnel manager made a decision to postpone hiring any new line staff and told the receptionist not to take any new applications. The receptionist interpreted this to mean that there were no more job openings and this is what she tells Tom. In fact the personnel manager, with whom Tom originally spoke, did not intend to cancel Tom's appointment. Yet Tom is flatly told that there are no longer any openings and that there is no one there to see him. What should he do?

Numerous techniques can be derived from this hypothetical and discussed in class. What would the trainee do in this situation? One of the key points is to HAVE YOUR PRESENCE RECORDED EVEN IF IT LOOKS HOPELESS. Of course, Tom may have to bring to bear some effective advocacy skills to insure that the receptionist does in fact make a note of (record) the fact that Tom did appear. The other critical advocacy skill that needs to be applied in this investigation problem is the use of the CHAIN OF COMMAND technique. Tom should not leave until he has tried to contact the receptionist's boss, and the boss of this boss if necessary.

4. Tom is the father of two children, Ed and Bill. He comes home one day and finds a small package of marijuana in the front hall. He immediately suspects one of his two sons and turns right around and goes out to look for his sons. What should Tom do?

5. In the above situation, Tom finds Ed and Bill. They deny any knowledge of the "grass". When they all get back home, they find another bag of marijuana in another room. They also discover that the house had been burglarized. Ed says maybe the burglars dropped the stuff." What should Tom do?

6. Tom's son, Bill, has been accused of using abusive language in front of his teacher. Tom calls the teacher who refuses to talk about it. The teacher refers Tom to the principal. The principal refuses to talk about it and refers Tom to the Assistant Superintendent at the central office. What should Tom do?

7. Tom's sister is ill. She receives a letter from a local supermarket where she often buys goods on credit. The letter informs her that she owes $157.27 and that unless she pays within a week, "legal proceedings will be instituted" against her. She calls Tom and tells him that she paid the bill last week. She asks Tom to help her. What should he do?

Here again (in #7) is a situation that could provoke the class to a wide variety of responses that could be manualized. This particular hypothetical hits upon a key investigation technique: GET THE CLIENT TO DO AS MUCH INVESTIGATION ON HIS OWN BEFORE YOU DO YOUR OWN INVESTIGATION. What do the trainees think of this? Do they see any dangers in it? What guidelines can they write on it? Should Tom determine what his sister can do on her own before he intervenes? Can she, for example, send him her records of her dealings with the supermarket? If there is not enough time to use the mails, can she have someone bring them to Tom? If she doesn't have all the records, can she call the supermarket and ask them to send her copies of their records? Can she at least call the supermarket and ask them to give her the dates when the bills were accumulated? What is she capable of doing on her own? Have her do it. This may save a lot of time and problems later. If Tom calls, the supermarket may be reluctant to talk to him.

8. Tom works for a local legal service office. The office has a client who wants to sue her landlord because the kitchen roof is falling down. Tom is asked to go to inspect the premises. How should he do it?

9. In the same situation as above, Tom arrives at the client's apartment to inspect the ceiling. While talking to the client she tells him that her daughter has not been home for three days; that her welfare check has not arrived for two months and that her husband beats her. What should he do?

The latter situation (#9) raises the threshold problems of DEFINITION OF GOALS AND GOAL PRIORITY. The paralegal must know what objectives he has in making the home visit. What is he supposed to come back with? What do the trainees think? If he finds other problems, what should he do? Try to deal with them on the spot or simply make a note of them and tell his supervisor what happened later? The paralegal must have a priority list as to what he is investigating. If he tries to investigate everything at once, he may end up investigating nothing adequately. Before the paralegal goes out into the field, he and his supervisor should have talked about what is to be done when new problems are uncovered. In some instances, it may be appropriate to call the supervisor while in the field to get instructions. The point is that the investigator must know what he is after (goal) and know what to do when contingencies come up that can take up his time (priority setting). What checklists can the trainees write that spring from class discussions that raise these points?

10. A welfare department has told a client that they are going to terminate public assistance because the client's boy friend is supporting her and her family. The client denies this. Tom is assigned to the case. What should he do?

A key to effective investigation is VERIFICATION and DOCUMENTATION. The trainees need to deal at length with the importance of these techniques. It may be that the original four part outline of basic skills (chapter seven, *supra*) should be added to; part five would become "RECORDING".

I. Threshold Concerns
II. Advocacy Skills
III. Evaluation
IV. Adaptation
V. Recording

"RECORDING" could include a number of sub-topics:

1. Describe what you saw.
2. Describe what you did.
3. What verification or documentation did you make or come across?

Here, then, is an example of how the basic skills chart is expanded *during* the training program.

How should the trainer teach verfication and documentation? First, he should have the trainees discuss these techniques at their own level. How do they verify facts for themselves in everyday situations? (*e.g.*, If they have checking accounts, how do they keep their records? If they claim certain income tax deductions, how do they document the validity of their claims to prepare for the possible time when they are called into the Internal Revenue Service to answer questions about their claim? *etc.*) A number of checklists could flow out of such discussions.

In the hypothetical (#10) would any trainee think it wise to get a statement from the boy friend as to his relationship with the family (if the boy friend exists at all)? If the boy friend says that he would have no money to give, even if he wanted to because he is laid off from work, should the investigator try to get a letter from his employer stating that he is out of work? Should the investigator try to get a written statement from the client's neighbors stating that the boy friend never comes to the client's house (if this in fact is the case and if the neighbors are able to say anything about this)? What do the trainees think?

11. A client has been to the office seeking help in obtaining a divorce. She claimed that her husband beat her. Several weeks later, the office attorney asks Tom to make a visit to the client's home to see if he can't come up with some information on this charge. Tom visits the client but when he begins to ask her if she has any proof of the beatings, she gets insulted. What should he do?

People often get insulted if you suggest to them that you don't trust their word. This is a delicate problem for the investigator to handle. What do the trainees think should be done when this arises? What techniques do they think would be effective in gaining the confidence of the person that they are handling the situation properly? The answers to such questions from the class could form the basis of a very useful checklist of skills and techniques that will help them overcome this difficulty when it arises.

12. Tom is in the field at the apartment of a client who claims that she is being billed for an electric refrigerator that she never ordered and that she never received. Tom decides to get two letters: (a) a letter from the apartment owner that the kitchen is not wired for electricity and (b) a letter from another merchant stating that the

> client bought a refrigerator from him one year ago. Is Tom using good investigative techniques?

Everyone in the class will probably agree that the the first letter is a very good idea. It is some indication of whether the client would be buying an electric refrigerator. Or is it? Would such a letter solve the case? What do the trainees think? The store could claim that the client bought the refrigerator for someone else or that the client intended to wire her kitchen for electricity in order to use the new refrigerator herself. What does the class think of the second letter? The trainer will probably find a wide difference of opinion on whether this letter would be meaningful at all. Just because the client bought another refrigerator from someone else one year ago does not mean that she could not have purchased a new one a year later. Once the trainer has gotten the class to the level of this kind of discussion, he should be ready to deal with the investigation principles involved. Some of the principles are as follows:

a. THE INVESTIGATOR MUST DISTINGUISH BETWEEN FACTS THAT PROVE YOUR POINT (or facts that a judge and jury would accept as sufficient proof) AND FACTS THAT ARE SOME EVIDENCE (or some indication of) YOUR POINT.

b. THE TESTS TO USE IN DETERMINING WHEN TO PURSUE A FACT THAT IS ONLY SOME EVIDENCE OF YOUR POINT ARE

   1. ARE YOU REASONABLE (as a matter of common sense) IN THINKING THAT THE FACT IS SOME EVIDENCE OF (or some indication of) YOUR POINT (is it reasonably relevant)?

   2. DO YOU HAVE THE TIME AND FACILITIES TO PURSUE THE FACT THAT YOU REASONABLY DECIDE IS SOME EVIDENCE OF YOUR POINT?

c. WHEN IN DOUBT ABOUT WHETHER A FACT IS REASONABLY RELATED TO YOUR POINT:

   1. PURSUE IT; or
   2. ASK YOUR SUPERVISOR WHAT TO DO.

It is almost always true that when an investigator comes back from the field and says "I couldn't find anything," he probably has not done a thorough job. He is probably confusing ABSOLUTE PROOF of something with REASONABLE EVIDENCE of something. He may say that nothing he found was reasonably related to what he was after, but upon questioning, it will probably become clear that he hasn't really used his imagination to come up with some OPTIONS, LEADS, POSSIBILITIES. He may have been looking for the information on a platter. The cardinal principle is:

THINK, DIG, DIG, AND DIG, BUT DON'T BE RIDICULOUS OR UNREASONABLE.

Good investigators are always in pursuit. *They are on the offensive and don't wait for the facts to come to them.* They know that the information is not always there for the asking. They know that leg work may be required. They know that 50% of their leads will become dead ends. They know that roadblocks will stand in their way. They don't freeze at the first hurdle. They know that there are no perfect ways of getting information. They know that they must take a stab at possibilities and that it takes some thinking and imagination to come up with the possibilities. At the same time, good investigators are not fools. They don't pursue blind alleys. *After being on the job for a while they have developed "a feel" for what is relevant or what is a reasonable possibility or lead. They have been able to develop this "feel" however, only because when they first started investigating, they had an open mind and were not afraid to try things out.*

Section B. Training Format

The last series of points stemming from the last hypothetical presented are obviously wide-ranging. They go to questions of the investigator's motivation as well as to his basic skills. The trainer can start dealing with these points by getting responses from the class to hypotheticals or by trying role-playing. As indicated, the trainees can organize their responses into manualized checklists and guidelines that they write down following the discussions. This training approach will reach a point of diminishing returns, however, particularly when you are dealing with very broad issues of investigation. While some of the issues and techniques can be and should be isolated and treated separately, particularly during the first phase of the classes on investigation, when it is time to pull the isolated skills together and to deal with the overview of investigation, there may be no substitute for "real" cases.

The trainer should ask the managing attorney for some "live" investigation problems that the trainees might handle under supervision. (see chapter five, *supra* on clinical education for paralegals.) The problems can be varied, *e.g.*, have a trainee try to locate a missing client; verify an address; talk to all the grocery store owners in a designated area about a certain credit policy; compare food prices in each store; call a caseworker for certain information; locate marriage records, *etc.* As each trainee gains such an experience, he comes back to the group for a collective discussion of the investivation techniques he used, the problems encountered, the investigation techniques that he might have tried, *etc.* Again, everyone engages in this discussion with an eye to checklists and guidelines. It will become easy to determine who is hustling, who has used some imagination, who is digging, who is being unreasonable in following leads, *etc.*

This, of course, could be time consuming. Yet the training could be structured in such a way that the class meets in the mornings and in the afternoons they work on field assignments and on developing their checklists-guidelines. There should be plenty for them to do during the latter part of the day so long as the trainer stays close to each of them. It is not necessary to cover each topic in training as a whole. The trainer could come back to certain topics. He, for example, could devote two mornings to investigation, move on to the next topic and then spend part of subsequent mornings back on investigation as the trainees confront meaningful field experiences on their investigation assignments. These experiences can be dealt with, and then the class could continue on with the subject that was briefly interrupted by the session on investigation growing out of the field experiences.

It does not necessarily mean that the training sessions have to be choppy and disorganized if this approach is taken. *Since the basic advocacy skills are broad and meaningful in many areas, continuity can be achieved by hitting on the universality of these skills no matter what topic is under discussion.*

Chapter Eleven

Informal Advocacy with Administrative Agencies

Section A. Introduction: Training Options

Undoubtedly all of the trainees have had "run-ins" with bureauracies. The wealth of this experience should form the basis of training in one of the most important aspects of an advocate's job: informal advocacy before administrative agencies. Other approaches, of course, could be tried. For example, the trainer could take one particular agency and treat it from a number of perspectives:

1) LAW PERSPECTIVE - Develop the legal bases of agencies. Show how they are multi-leveled in terms of federal, state and local funding. Show how each level has its own scheme of interlocking regulations based on statutes, regulations and cases *etc.*

2) MANAGEMENT PERSPECTIVE - Develop a management flow chart of the agency. Who is boss? Who is responsible to whom? What authority does line personnel have? Who is given discretion to do what in the chain of command, *etc.*

3) SOCIOLOGY PERSPECTIVE - Show how the organization functions in terms of social status, Inertia and "Peter Principles." Develop an understanding of the pressure points in the group. Where is the group vulnerable? Who are the renegades? Where does the organization produce tension by reason of its structure *etc.*

4) PSYCHOLOGY PERSPECTIVE - Get into the head of the "typical" civil servant. What are the conflicting tensions that govern his behavior? What is he threatened by? Where does he get his satisfaction? Why is he there? *etc.*

While all of these approaches have merit, none of them should be presented in the abstract; *they all should have their starting point in what the trainees now know about bureauracies.* It may be that bits and pieces of each of the four approaches can be treated from the most important perspective of all: the trainees. Build on what the trainee already has.

For purposes of discussion, an agency should be defined broadly as any organization whose purpose is to serve the public either through the sale of goods or through the provision of services. This includes a government agency such as the Welfare Department with thousands of employees, the semi-private community corporation such as a CAP agency or a legal service office, and a local supermarket.

Section B. Seven Part Approach

One way of covering the subject is to use a seven-part approach. Again, note the leaner-focused method of starting with what the trainees already know and building upon it:

I. What agencies have the trainees dealt with?

II. What problems have they faced in *applying* for agency service?

III. What problems have they faced in *maintaining* a proper level of service?

IV. What problems have they faced with respect to a *reduction* or *termination* of the service?

V. How have they dealt with these three levels of problems in II, III and IV?

VI. What other ways could they have dealt with these problems?

VII. What advocacy principles, skills or techniques can be deduced from their prior experiences and from the class discussion of these experiences? How can they be translated into checklists or guidelines to be used on the job? How can they be fit into a useable manual form?

Most of the experiences that the trainees have had will probably be at the informal level which is to say anything short of a formal "hearing" at which opposing sides are prepared in advance and present "evidence" to a third party who will make the decision. If some of the trainees have actually participated in formal hearings either as advocate or client, their experiences should be saved for later treatment in the training program. (In this text, formal advocacy will be discussed in chapters twelve and thirteen *infra*. For now the training should focus the more common variety of agency contact: the informal interchange of agency and client. The trainees may relate their experiences as client (self advocacy) or as "helper" (advocate for others). Don't talk in terms of advocacy yet, however. Deal with the discussion in terms of experiences and responses. The discussion will easily translate itself later into advoacay skills and techniques. One of the best ways to establish an identity between the trainees and advocacy skills is to begin dealing with both at a level that the trainees are most comfortable and familiar with and to build on this.

I. What agencies have the trainees dealt with?

The list of course, will be extensive. The goal is to find a few agencies in a variety of categories that the trainees, as a whole, "like to talk about" and/or appear to have dealt with more than others. The list that the trainees come up with may look something like the following:

schools
police department
post office
social security department
employment agency (public or private)
restaurant
welfare department
tenants association
labor union
insurance company
auto body shop
supermarket
law office
tax department
rental agency
democratic party
senate
city council
mayor's office
governor's office
travel agency
court clerk's office
etc.

There are a number of ways in which the trainer can formulate such a list:

1) Have the class members simply call out items without anyone writing them down.

2) Have the class members simply call out the items with the trainer writing down the non-repetitive items on the blackboard, or better still, on the large sheet of paper which will be hung on the wall permanently during the training.

3) Have the trainees spend two minutes making a list of items on a sheet of paper before any discussion takes place. The trainer later writes down the non-repetitive items as in "2" above. The trainees can be asked to make their individual list:

   a) at random;
   b) by listing the agencies in the order of their most recent experiences, with the most recent agency listed first;
   c) by listing the agencies in the order of their frustrations, with the first item being the agency that they are most frustrated with and the last agency listed being the one with which they have had the least difficulty.
   d) *etc.*

The third approach is probably the most effective, even though it may take a few more moments than the first or second. The value of concluding with a list that is clearly visible throughout the training is that it can be referred to regularly. When the class focuses on a particular advocacy skill for the welfare department, for example, at some point the trainer can point to the list and ask the class if and how that same skill would apply to the police department or an insurance agency. The time will then be ripe to discuss how the skill must be accommodated to the particular agency before which the individual is advocating. This will help to add a new dimension to the skill. The skill will be dealt with from the perspective of the universality of its applicability as well as from the perspective of the necessity of applying it with flexibility to suit the setting. The value of having the trainees list the agencies according to some order such as in "3b" and "3c" above, is that you increase the potential of getting a lively discussion and of identifying the agencies that the trainees have something to say about—which is to say that you start from the trainees' strength.

II. What problems have the trainees faced in *applying* for the service?

The trainer then picks an agency (from one of the categories of agencies that have been roughly grouped together in any rational order that the trainer decides upon, either alone or with the trainees) and begins to talk about the problems the trainees have faced in *applying* for the service provided by the agency. Whenever appropriate, the trainer can pick another agency, or several of them in order to come up with an extaustive list of *application* problems.

Don't let the trainees deal with how they handled these problems yet. Considerable time should be spent in *problem identification* at the outset. This is one of the major responsibilities of the advocate. It's not as easy as it may appear. Many an advocate is rendered ineffective not simply because he cannot solve a problem, but also because he is having difficulty identifying and articulating what the problem is. Hence sections II, III and IV should focus only on what the issues are. This will encourage a pattern of thinking in the trainee. Once the problems are all out in the open, they can be categorized or clustered. Solutions will tend to suggest themselves. Cross-referencing of solutions is facilitated if the issues or problems are adequately laid out or outlined.

What then are some of the *application* problems that the trainees are likely to come up with during the discussion? (Note that it is appropriate for the trainer to suggest some problems that don't readily come to the minds of the trainees. He can "help" them in the formulation of application problems that they don't see. It should not be a trainer's list, however, and he should intervene with his suggestions only when the trainees have exhausted their own list.) The list might look something like the following:

> "I couldn't apply because I really didn't know that the agency even existed."
>
> "I couldn't apply because I didn't know that the agency had what I was looking for."

"I didn't know precisely what I was looking for, so I didn't know that the agency could help me."

"The agency was too far away."

"The agency was never open when I could make it over there."

"There were so many people and offices at the agency that I didn't know where to begin applying."

"There was such a monstrous waiting line that I couldn't possibly waste my whole day there trying to apply."

"No one at the agency knew how to speak Spanish."

"They sent me somewhere else and when I got there they sent me to still another place."

"The people at the agency told me that they no longer had any funds to cover what I needed."

"The receptionist was very rude to me."

"They told me that I had to get onto a long waiting list."

"They kept stalling me and I never did get what I wanted."

"They told me that they lost my records and that I would have to re-apply."

"They told me that I didn't qualify."

"They told me that the person in charge of taking applications was sick and that I should call in later to find out when this person would be back."

After the trainer is satisfied that he has a fairly comprehensive listing of application problems, he should try and work out with the trainees an outline of headings under which all the problems will fall. The outline might look something like the following:

Outline of Application Problems

A. KNOWLEDGE PROBLEMS

1. didn't know agency existed.
2. didn't know what services the agency provided.
3. *etc.*

B. BUREAURACY PROBLEMS

1. I got the run-around.
2. it was chaos.
3. I was treated with disrespect.
4. *etc.*

C. LAW PROBLEMS

1. They said I didn't qualify.
2. They said I couldn't get the service now.
3. They gave me no satisfactory explanations for the above.
4. *etc.*

D. MY OWN PROBLEMS

1. I didn't know what I wanted.
2. I got discouraged too easily.
3. I didn't hustle.
4. *etc.*

III. What problems have they faced in *maintaining* a proper level of *service?*

Now move to the second level of problem identification: maintaining service. The range of responses from the trainees should be equally varied:

> "Whenever I tried to call the agency on a question I had, the phone was either busy or out of order."
>
> "I didn't know that they wanted to hear any of the problems I had after I began receiving their services."
>
> "I never knew who was assigned to my case."
>
> "The person assigned to my case kept changing."
>
> "They told me that I had to fill out a long form before I could raise any problems that I had."
>
> "No one could speak Spanish."
>
> "They were very rude to me."
>
> "There were so many people and offices there that I didn't know where to go with my question."
>
> "They didn't want to hear what I considered to be 'proper' service."
>
> "They told me that they did have a department that would give me greater benefits, but they said I didn't qualify for it."

> "They disagreed with me when I told them that I was not getting good services."
>
> "When the man told me that I was getting the best service that the agency had to offer, there was no one else in the agency that I could turn to."

In categorizing these service problems, use the same four part outline used for application responses:

Outline of Service Problems

A. KNOWLEDGE PROBLEMS

1. I didn't know that they wanted to hear my complaints.
2. *etc.*

B. BUREAURACY PROBLEMS

1. run-around.
2. chaos.
3. rudeness.
4. *etc.*

C. LAW PROBLEMS

1. Was I entitled to make a complaint?
2. Did they provide a forum for complaints?
3. Was I entitled to talk to someone else if the first person I spoke to gave me no satisfaction?
4. *etc.*

D. MY OWN PROBLEMS

1. I didn't do my homework about the agency to know how to bring up my complaints.
2. I didn't hustle enough.
3. I let my feelings get hurt by rudeness.
4. *etc.*

IV. What problems have they faced with respect to a *reduction* or *termination* of the service?

> "They based it all on erroneous information."
>
> "They wouldn't tell me why they were cutting me off."
>
> "They were rude."
>
> "They did tell me that a 'meeting' was arranged to discuss my case, but when the 'meeting' was over, I didn't know what had happened."

> "While I waited till we had our 'meeting', they took the services away from me."
>
> "They said that the decision was final."
>
> "When I tried to ask why they were terminating me, no one could answer my question."
>
> "I didn't know that I could challenge their action."

Again using the same four part outline structure, a pattern of problems emerges:

Outline of Reduction-Termination Problems

A. KNOWLEDGE PROBLEMS

1. Didn't know how to complain.
2. Didn't know that I could complain.
3. *etc.*

B. BUREAURACY PROBLEMS

1. Chaos.
2. *etc.*

C. LAW PROBLEMS

1. Notice.
2. Hearing.
3. Representation.
4. Maintain benefits pending hearing.
5. Present evidence at hearing.
6. *etc.*

D. MY OWN PROBLEMS

1. Didn't do my homework to learn how to challenge the action.
2. No hustle.
3. *etc.*

V, VI, VII How did the trainees handle these problems; how could they have handled them and what advocacy techniques can be deduced from it all?

Now comes a major turning point in the training. Recall that in chapter seven, *supra*, we dealt with basic advocacy skills that the trainees brought with them to the training programs and that were developed during the discussions covering the topics in that chapter as well as in the chapters on interviewing and investigation. That material, and particularly the summary chart (on the inside page of the back cover) is directly relevant here. To bring it all together, the following sequence is suggested:

1) Have the trainees go back to (a) the application problems (b) the service problems and (c) the reduction-termination problems and list the ways in which they tried to overcome them. The trainer should record these on the blackboard or on a plainly visible large sheet of paper.

2) If the trainees had it to do over again, would they try anything different to overcome these problems? If so, list these as well.

3) GO BACK TO THE CHART ON ADVOCACY SKILLS (on inside of rear cover). SEE HOW IT FITS INTO THE APPROACHES LISTED ABOVE:

    a) DOES THE CHART HELP?
    b) HOW MANY OF THE APPROACHES LISTED ABOVE FALL INTO THE CHART?
    c) WHAT NEW ITEMS NEED TO BE ADDED, CHANGED OR CONSOLIDATED?
    d) WHAT ELSE DOES THE CLASS SUGGEST TO MAKE THE CHART MORE USEFUL?

4) Re-make the chart in the light of this discussion.

5) Role-Play some agency situations to determine how well the trainees are relating to the chart, and more importantly, to the substance in the chart.

6) Re-make the chart in the light of the role-playing experiences.

The trainees should be drilled and re-drilled in the substance of the chart. The chart that the trainer and class devised after following the suggestions in chapter seven may have slightly differed from this one, yet it was urged that the organizational structure of the chart remain basically the same. This chart should become and remain the basic working document and reference point for the entire advocacy training and for the entire tenure of the trainee's subsequent employment. The chart is a foundational format by which the trainees and trainer can develop, work and grow together. The chart can serve the same purpose in terms of the employee-employer relationship. The charts, as amended, are basic evaluative mechanisms and if used properly, they are instruments of self-training later on.

One can, of course, get too excited about a chart or a series of charts. It is submitted, however, that one of the basic flaws of training programs and of employment settings for paralegals is an inordinate lack of structure, with all of the sub-problems that this entails. The approach suggested in this chapter and throughout the text is one way to deal with these problems.

POSSIBLE HYPOTHETICALS ON INFORMAL ADVOCACY:

Tom gets a letter from the post office stating that a package is waiting there for him. He goes to the post office and discovers that it has been at the post office for eight months. No one notified him before. What does he do?

Tom has been waiting for the social security office to respond to his letter asking for specific information. He has been waiting six weeks. He calls the office and they tell him they can't find his request letter. What does he do?

Tom brings his son to a clinic for a one o'clock appointment. At 4:30 p.m. the doctor starts seeing patients. Tom's son sees the doctor at 6 p.m. The last time Tom was at the clinic the same thing happened. What does he do?

Tom takes his mother to the clinic. She is asked to go into the x-ray room. When the doctors come out, they pass the waiting room and Tom hears them discussing his mother's case. Everyone in the waiting room can also hear what the doctors are saying about his mother's medical problems. What does Tom do?

etc.

Using hypothicals such as these, have the trainees:

1. Identify the problems.
2. Categorize the problems into four parts:
   a. Knowledge problems.
   b. Bureauracy problems.
   c. Law problems.
   d. My own problems.
3. How would the trainees handle the problems?
4. What advocacy skills are the trainees using when they handle the problems?
5. Are they effectively using the five part structure of the basic advocacy skills checklist?:

a. threshold concerns
b. advocacy skills
c. evaluation
d. adaptation
e. recording

Chapter Twelve

Advocacy and Formal Administrative Hearings: Advocating for the Elements of a Formal Hearing

The training program needs to deal with five issues relating to formal hearings:

1. What is a hearing?
2. When to ask for a hearing?
3. What are the elements of a formal hearing?
4. Can the paralegal insist on all of these elements every time he asks for a formal hearing?
5. How do you conduct a formal hearing?

This chapter will cover the first four questions and the following chapter will cover the fifth.

Section A. What is a Hearing and When to ask for One?

In its broadest terms a "hearing" means: Someone listening to you state your problem or complaint. It's not easy to distinguish between a formal and an informal administrative hearing. If a unit supervisor calls a client and her caseworker into his office to discuss her case, it could probably be considered a hearing. Is it a formal or an informal hearing? It's a matter of degree. The general test is: the more the hearing looks like a court proceeding (informal deciding officer, representation, evidence, *etc*), the closer it is to being a formal hearing. Some administrative agencies have formal hearings, *e.g.*, the welfare "fair hearing." Other agencies provide for much more informal meetings or case conferences (rarely called hearings). Still other agencies provide neither meetings nor hearings; they simply refuse to have their actions challenged in any such setting.

The standard rule for the advocate should be:

> ASK FOR SOME FORM OF A HEARING WHENEVER A CLIENT IS DISSATISFIED WITH A DECISION OF AN AGENCY AND THE ADVOCATE AND HIS SUPERVISOR DECIDE THAT IT IS APPROPRIATE TO CHALLENGE THE AGENCY.

Simply because the agency does not have a complaint process called "hearings" does *not* mean that the advocate cannot ask for a hearing, in one form or another. In a sense, the "chain of command" technique is a way of asking for a hearing (*supra* chapter seven). You can *ask* for anything you want; whether or not you will *get* it depends upon how effective an advocate you are.

Section B. The Elements of a Formal Hearing.

The elements of a formal hearing are sometimes referred to in constitutional law terms as "procedural due process." Some of the more common elements are:

1. right to adequate notice in writing;
2. right to appear in person;
3. right to submit written documents and statements;
4. right to see the evidence against you, before the hearing;
5. right to an impartial decision-maker;
6. right to confront and cross-examine adverse witnesses;
7. right to call your own witnesses;
8. right to representation at the hearing;
9. right to continue receiving the agency benefit until a hearing decision is reached;
10. right to a hearing decision in writing with a statement of the reasons for the decision;
11. right to expect that only relevant evidence will be considered at the hearing;
12. right to a free copy of the hearing transcript if you can't afford it yourself;
13. right to an appeal of the decision to a higher official;

It would be a serious mistake however to deal with this topic from such a technical perspective, or more accurately, it would be a serious pedagogic error to *begin* this topic from such a perspective. First, establish an experiential foundation within the framework of the following question:

> WHAT AS A MATTER OF COMMON-SENSE AND FAIRNESS
> SHOULD BE INCLUDED IN A HEARING?

If the trainer can help the trainees to identify and articulate their visceral responses to this question, then half the battle has been won. The fact is that the most formal administrative hearings rarely allow for all thirteen elements listed above. The welfare fair hearing may be one of the important exceptions. *They should also be taught when to ask for, how to ask for and how to use, any of the thirteen elements in any hearing without necessarily resorting to the language used in the above listing of the thirteen elements.* Suppose that an advocate is assisting a client who has had his driver's license taken away. Suppose further that the Department of Motor Vehicles has no preliminary formal hearing procedure. The department says that the motorist-client failed a spot-car-inspection test administered "a week ago" on the road. The client denies that he was ever given such a test. The advocate wants to talk to the officer who allegedly administered the test. He should *not* call the Department and say: "As a matter of procedural due process, we demand the right to confront the witness against the client in order to cross-examine him." This tactic would obviously be highly questionable. Rather, the client might say "don't you think it would be fair if we had a chance to talk to the officer before you suspend the license?" The way to teach a trainee to respond this way, as opposed to responding with forced and technical terms, is to establish a common sense understanding of what fairness involves. If this is done, then you increase the liklihood of the advocate's being able to intelligently determine when and how to apply this understanding in an agency situation.

How does the training program get at this understanding? First by giving the trainee a forum to articulate it *without* resort to technical legal language. Second, by giving the trainee a forum to analyze and develop his understanding through supportive group discussion of it in class.

The starting-point is a hypothetical constructed as close "to home" as possible. For example:

> The trainee is an employee of the XYZ lumber company. One day he gets a call from the assistant manager upstairs who says "I have just been looking through all of the records and it is clear to me that you have been using the company car for your own personal use. You are fired." Just before the assistant manager hangs up, ask the trainee what his response would be? As a matter of common sense, what's wrong with the assistant manager's approach? (Assume that the trainee denies the charge.)

Note that in this hypothetical, the assistant manager wanted to end the entire matter right on the phone. What visceral response does the trainee have? Shock? Anger? Silence? Ask the trainee to describe why he is shocked, angry or silent. Discourage the trainee from giving his answers in technical language; encourage him to respond as he thinks the employee would respond. Some of the possible responses are:

1. "I wasn't given a chance to explain myself before I was fired."

2. "I wasn't given a chance to talk to the assistant manager before I was fired."

3. "I wasn't given a chance to be told what records he was talking about."

4. "I'd want a chance to talk to the assistant manager's boss before I was fired."

Now translate these responses into a legal framework:

1. I should be given an opportunity to be *heard*, to explain my side.

2. I should be given this opportunity *in person* (rather than by simply putting my position in writing).

3. I should be allowed to *examine* the *evidence against me.*

4. I should be allowed to *appeal.*

Note that the trainee would ask for all of these items before his job is taken away from him.

Through this process, the first step has been taken in establishing an experiential foundation for understanding constitutional law or procedural due process.

Now throw the hypothetical open for general class participation. What other visceral responses would they have? The trainer can suggest responses to them, but only to help them articulate what is lurking in their own minds. As a final resort, if no other responses are forthcoming, he can state some of his own responses and see if they can identify with them.

5. "Before he called me to tell me that I was fired, he should have let me know that I was in trouble."

Here the call, in legal terms , is for *adequate notice* in advance. Before the phone call, and certainly before the actual firing, the employee should have been given *notice* of what was going on.

6. "Since the assistant manager was the one who made the charge, he should not be the one to make the decision."

Legally, this response goes to the question of *legal bias* and an *impartial decision-maker.* The basic theory is that the accuser should not be the executioner. If the same person wears both hats, the likelihood is that he will loose objectivity. While making the decision (as executioner), his tendency will be to reinforce the decision he originally made (as accuser) rather than to approach the final decision with an open mind. In short, the man with both hats is likely to have a bias. In the hypothetical, the assistant manager made the original charge (accusation) of misusing the company car and he also made the decision to fire (executioner). He appears to have a bias.

The topic of legal bias is interesting but difficult to teach. It may take some prodding by the trainer even to raise the issue. If the words "accuser" and executioner" are used, then the cards have been stacked in favor of one conclusion. The very thought of the accuser being the executioner is abhorrent. In all liklihood, all of the trainees will agree that this is bad. But this clearly overstates the case. Isn't it clear that parents often see their children doing something wrong (the parent becomes the accuser) and immediately sanction them (the parent becomes the executioner)? Isn't this a natural occurrence? Wouldn't it be silly for the parent to ask a neighbor to come over to do the sanctioning? It's not improper for the parent to wear both hats. Or is it? What's the difference between the parent-child case and employment case? What do the trainees think? Does the parent have a bias?

The *answer* to this question is less important than teaching the trainees to *raise* the question so that they can spot the issue on their jobs. The answer to the question is as follows: A person who wears both hats *probably* has a bias. It is not necessarily true that the bias exists. It depends on the circumstances. If the person who brought the complaint is emotionally "wrapped up" in the complaint (particularly where the complaint is that this same person has been injured), then you increase the likelihood of this person being biased if he also wears the hat of decider and punisher. The goal, however, is not to teach the trainee to go through a complex argument in his own head to determine if bias exists. The goal is to teach him to be able to "smell" the potential for bias so that he can raise the subject with his supervisors at the office and, when appropriate, raise the subject at the administrative agency itself. Take these situations, for example:

> "A receptionist at a social security agency tells a client that she filled out the form incorrectly and that she will have to come back next week to try it again."

> "A welfare caseworker makes a home visit and claims to have found a gross impropriety relating to the welfare regulations. The caseworker immediately suspends the client's regular welfare check."

One response to these situations is to say that the client should be able to *appeal* the decision to someone else. Another response is to argue that in both instances the accuser was the one who immediately administered the punishment and that this is inappropriate as a matter of basic fairness and common sense. An advocate who represents the client in both cases could go to the social security office manager and to the welfare department supervisor and say something like:

> "It just doesn't seem fair that the sanction should be imposed by the (receptionist) (case worker) until someone else in your office has had a chance to cross-check the complaint that the (receptionist) (caseworker) had.

The goal is to get the trainees to be able to make this kind of response. Of course, the trainee may not be successful. Litigation by the office may eventually be needed to remedy the problem (as was the case with respect to welfare departments which now require a hearing by an impartial, non-involved person before welfare can be terminated). On the other hand, the advocate might be successful in convincing the agency that its procedure is questionable, at least with respect to the particular client whom the advocate is trying to help. The point is that some sophisticated training will be required before the trainee will become accustomed to *raising the issue.*

Back to the employment hypothetical. What other responses do the trainees have to the action by the assistant manager? What responses can the trainer help the trainees to make?

7. "When I am able to confront the assistant manager, I should be able to have someone help me state my case."

Legally, the call here is for the right of *representation:* counsel or counsel-substitute.

8. "When I am able to confront the assistant manager, I should be able to bring with me some of my co-workers who will back-up my side of the case."

Legally, the call is for the right to bring *your own witnesses* to the hearing.

9. "When the XYZ lumber company finally makes its decision in my case, they should give me their decision in writing with the reasons for their decision stated."

Legally, this is a call for a *written opinion.*

10. "When I have my hearing, I have a right to expect that they deal with the charge that they raised and not bring up facts such as that I am not going through a divorce proceeding."

Legally, the call is for only *relevant evidence* to be considered in making the decision.

The trainer should go through a series of "drills" involving hypotheticals such as the employment case in order to determine whether the trainees are spotting the procedural due process issues. The hypotheticals should progressively deal with situations that the trainees will confront in the field where they normally would not think in terms of hearings, formal or informal.

The ultimate objective of this phase of the training is to convince the trainees that *they must be advocates in fighting for the existence of a hearing and for the elements of a hearing.* Advocacy does not simply relate to the conduct of a hearing. There will be many instances when no one will even think in terms of a hearing or of the elements of a hearing unless the advocate raises these points. It should be carefully reemphasized, however, that the advocate should not go around screaming "formal hearing" everytime an agency takes something away from a client. The job of the advocate is to raise the issue and to discuss it with his office supervisor in order that they might both map out a strategy. It may be that a decision will be made against calling for a formal hearing even though the case may be ripe for one. It's a question of strategy. The trainee must receive guidance and instructions from his supervisors. The point is, however, that he may never get to this stage if he has not been trained to raise the issues.

Chapter Thirteen

How to Conduct a Formal Hearing: A Primer for Paralegals

Section A. Introduction

This chapter is addressed primarily to paralegal trainees with the following question in mind:

> How do you apply the basic advocacy
> skills checklist (see inside page
> of back cover) to formal hearings?

The trainee is asked to apply the specific components of the checklist to a formal hearing. The welfare fair hearing is used as an example. Since this is a specialized kind of hearing, time is taken to explain the more technical aspects of it to the paralegal. Hence this chapter contains more instructions and pre-determined guidelines than would normally be found in a learner-focused method of training. There is, nevertheless, a great deal of room for trainee in-put and many opportunities for the trainer to engage the trainees in role - playing. The starting point is a fact situation: the case of George Temple.

FACT SITUATION

George Temple was born January 1, 1950. His parents, Mr. and Mrs. Sam Temple live at 435 West 100th Street, New York, New York. He graduated from High School in 1967 and spent six months at Wentworth Technical Institute in Boston before dropping out. He came back to live with his parents in May of 1968. But while in Boston, he began using drugs. He smoked pot regularly and experimented with LSD and heroin. After returning to New York, he got a job with the Thomas TV Repair Shop on April 15, 1968 at 90 South Side Avenue, Queens. The boss, John Adams, fired George on June 1, 1968, because he suspected George of being an addict and of stealing.

On June 30, 1968, George married Ann Fullar. George began using drugs more often. Ann realized that he was not going to be able to support her and their expectant child. When the child was born on January 2, 1969, she decided to go to the Amsterdam Welfare Center to apply for public assistance. She did so on January 10, 1969. The case worker, Brenda Marshall, asked Ann what her husband did for a living. Ann answered that he took odd jobs "off and on" since he was sick. The case worker asked if he was an addict. Ann was scared and answered "no." The case worker told her that she would need more information about her husband's employment history and condition before her application could be processed and approved. Ann left the Center confused and frustrated. She never returned.

In the meantime, George was arrested on March 13, 1969 for possession of a dangerous drug in the third degree. He "took a plea" for attempted petty larceny and spent four months at Green Haven prison.

When he got out on July 13, 1969, he went to live with his wife at 758 West 85th Street. While George was in prison, Ann worked as a waitress while her mother-in-law cared for the child. She was laid off from work on August 1, 1969.

George did not want to settle down with a job. He began using drugs again. He wanted to stop but couldn't.

On September 1, 1969, he went to Exodus House, a drug rehabilitation center in East Harlem. He stayed only two days since the program, he claimed, demanded too much from him. For example, he would have had to live at Exodus House which he refused to do. On September 25, 1969, he went to Reality House, another rehabilitation center at 2065 Amsterdam Avenue. This was not a live-in program; members stayed there only from 9 to 5. To become a member, you only had to come regularly. On October 1, 1969, he left this program because when his urine was tested, it came back positive which meant that he was still using drugs. He left rather than be confronted with the results of this urine test.

On October 2, 1969, he got a job with the ABC Truck Company and worked there part time until February 15, 1970, when he was fired for being late.

On February 16. 1970, he went back to Reality House. He failed to attend reguarly. On March 1, 1970., he went to Amsterdam Welfare Center to apply for welfare for himself and family. The case worker, Linda Stout, asked him why he could not get a job. He said he was an addict and attending Reality House. Linda Stout was skeptical. She demanded verification that he was a member of Reality House. George went back to Reality House to speak to his therapist, John Hughey. Mr. Hughey told him that he could not give him a letter stating that he was a member of the program until he began to attend more regularly.

On March 15, 1970, Linda Stout contacted Brenda Marshall, the case worker who previously interviewed George's wife on January 10, 1969. Brenda told Linda that Mrs. Temple told her that her husband was *not* *an addict.*

In the meantime, George still had trouble getting a letter from Reality House stating that he was a full member of the program. George was trying to attend regularly, but couldn't make it.

On March 17, 1970, Linda Stout called John Hughey at Reality House who told her that George was not coming in every day. On March 18, 1970, she closed George's case, declaring him ineligible for welfare for failure to demonstrate need.

George wants a Fair Hearing.

Cast of Characters:

Advocate for George
George Temple
Ann Fuller Temple
John Hughey
Referee (Deciding Officer)
Attorney for City at Hearing
Linda Stout

Section B. Threshold Concerns

The threshold concerns are threefold: goals/priorities; intervention; personality.

1. Defining Your Goals in Order of Priorities

What goals do you, as advocate for George, have in the above fact situation? What are you trying to accomplish? George has a number of problems:

1. He is in danger of being arrested if he is still using drugs.
2. He apparently can't support his family.

Are there other problems?

Your possible *goals*, therefore, are to help George solve both problems. Which of the goals have *priority*? Which should you spend time on? How do you find out the answer? First, you ask George. What does he want? You then check with you supervisor. He will let you know whether to deal with one or both of these problems in the light of what George wants and what the office can do. Are the two problems interrelated? Can you help George solve one without assisting him on the other?

Suppose that you determine that you are to give *priority* to the family support *goal*. The next concern is to decide when and how to *intervene*.

2. Deciding When to Intervene

George comes into the legal service office and tells you that he wants to fight the decision of the caseworker, Linda Stout. He wants a hearing. Is this an appropriate strategy? What alternatives exist? What about informal advocacy? Do you want to call or visit Linda Stout? Brenda Marshall? Mrs. Temple? John Hughey? Linda Stout's boss? Brenda Marshall's boss? John Hughey's boss? If so, why do you want to contact them? How important do you think it is to try to resolve the problem without a formal hearing? Is the time ripe to intervene by asking for a formal hearing?

Suppose that you decide to give informal advocacy a try, but it doesn't work. The welfare department still refuses to declare George eligible. Therefore, in consultation with you supervisor, you decide to ask for a fair hearing.

Do you immediately walk into a hearing? What about PREPARATION for the hearing? Part of the decision on when to *intervene* is whether you are *ready* to intervene. Are you *prepared* for the hearing?

How do you prepare for a formal hearing? Make a list of all the things you want to do before you walk into the hearing room. How does your list compare with the following list:

a) Define the issues.

b) Investigate the facts.

c) Make sure you have all the documents that you can get your hands on that will be used by the other side.

d) Make sure your own documents, (the ones that you will present) are ready.

e) If possible, sit in on and observe a similar hearing conducted by another advocate or by an attorney.

f) Decide whom you are going to call as your own witnesses.

g) Prepare your own witnesses.

h) Try to find out whom the other side is going to call as witnesses. If you can't talk to them before the hearing, try to anticipate what they are going to say.

i) Map out a preliminary outline of the strategy that you want to use at the hearing ALWAYS REMEMBERING THAT UNFORSEEN CIRCUMSTANCES ALWAYS COME UP REQUIRING THAT YOU BE VERY FLEXIBLE.

j) Make sure that your client and your witnesses (if any) will appear at the hearing.

k) If you don't have enough time to prepare, ask for a postponement of the hearing.

a) Define you Issues

What are the issues in George's case? What would you have to show in order to qualify him for welfare? What are the points in doubt? There are at least two main issues: (1) is George an addict and (2) is he a member of a drug rehabilitation center? If you showed that George was an addict, wouldn't he be sent to jail or to a hospital? Is this a real danger? How would you find out? Linda Stout demanded verification from George that he was a member of Reality

House. Can you identify two reasons she would ask for this? Is she saying that if George is not a member of a drug rehabilitation program, he probably is not an addict? Or is she saying that he can't get welfare unless he is a member of such a prgram even if he is an addict? Which is the case? How would you find out? What other issues exist?

b) Investigate the Facts.

What facts do you think need to be checked? What are you unsure of? Are you sure that George is an addict? What is an addict? Someone currently using drugs? What kind of drugs? How would you find out? Are you also unsure about George's relationship with Reality House? What is a "member? How many definitions of "member" might exist? Do George, Linda Stout and John Hughey define it differently? Would you want to check this out? How often does George go to Reality House? What does "regularly" mean and according to whom? What other items would you want to investigate?

c) Get their Documents

Are you curious abut what documents the welfare department will be using at the hearing to prove their case against George? Why not ask the department to send you copies of these documents in advance of the hearing? Would this be a fair request? Suppose they said that they would do so but only if you sent them copies of the documents you will be using? What would you do?

What documents would you be interested in seeing? Their entire file on George? Their most recent policy statement on addicts? What else?

d) Your own Documents.

What documents do you want to present at the hearing on behalf of George? Do you want a letter from Exodus House stating that he once attended their program? If so, why? What would it prove? Do you want a letter from Reality House? Saying what? Would you ask them to write down all of the dates that George did attend that program? Would it help or hurt to get a letter from ABC Truck Company stating that George once worked there? Suppose that you could arrange a doctor's examination of George. Would you want to use the results of this examination at the hearing? What would it depend upon?

e) Observe someone else run a Hearing.

There is no better way to prepare for a hearing than to see one in operation before you conduct your own. You might "tag" along as the assistant of another advocate conducting a hearing. Extensive notes should be taken on procedure and strategy. This will be difficult to do since the experience will probably be new. Give it a try. Later on, organize your notes into an outline covering the procedures used at the hearing as well as the strategy that both sides employed.

f) Decide whom you will call as Witnesses

Who should be present at the hearing to help George make his case? Should George be present? Why? Should John Hughey be present? Why? How about the boss of John Hughey? Would he be of any help? Do you want George's wife to be present? The tests that you should use in deciding whether to ask a witness to be present are: does he have something to say that would help George make his case and would he be able to say it? Someone may have important points to make, but be so frightened at the thought of going to a hearing that he is simply not available. Suppose you have a witness that you want to call, but the person has an acute stuttering problem. How would you handle this?

g) Prepare Your Witnesses

Tell them what the hearing is all about to set their mind at ease. They must trust you before they will be willing and valuable participants. Tell them why you want them to talk (you don't have to use words such as "witness" and "testimony" if this would frighten them.) Get them to role-play the proceeding with you. A very brief role-playing experience can be very helpful. Explain to them that the other side may want to ask them some questions after you have introduced them and asked your own questions. Be sure that your witnesses understand what the issues are. They may try to use the occasion to tirade about everything under the sun. This could be damaging, unless you determine as a mater of strategy that it would be useful to let the witnesses "unload" to some extent. The advocate must be careful not to place his witnesses in embarrassing situations. Suppose that the issue at a hearing relates to adultery. Care must be taken not to ask your own witnesses questions that could be used against them in later court proceedings. The test is: whenever you think that a question that you want to ask might be embarrassing to your witness, check it out with your supervisor before the hearing. What about George's addiction? Can you think of any questions that you would ask him that might get him into trouble?

h) Check out their Witnesses

Ask the other side whom they will bring to the hearing to support their case. If their only witnesses will be agency employees, call them up or go see them. They may be very willing to talk to you. If you find out that they are going to call non-employee witnesses, check with your supervisor as to whether you should try to contact them. Your approach should be casual. Don't say to these witnesses, "what testimony are you going to give at the hearing next week?" Rather deal with points of information: "I understand that you know George Temple. Could I ask you when you last spoke to him?" Information will tend to flow from such "innocent" questions. If not, try asking more pointed questions. Suppose no one wants to talk to you. What do you do? Suppose that they talk to you but are irritated by your questions. Could this hurt you at the hearing?

Suppose that in making these contacts you discover that the entire matter can be settled without a hearing. What do you do?

i) Preliminary Strategy: Flexibility

The great danger of pre-planning, of course, is that the unexpected almost always happens to "foul-up" your preliminary plan. It nevertheless is helpful to have a tentative plan in mind SO LONG AS YOU DO NOT SLAVISHLY TRY TO FOLLOW IT. Flexibility is the key. The preliminary plan/outline should be very brief and organized according to some order.

A very useful approach is to arrange all the facts according to a chronological history. Every client's story has a beginning, middle and an end. Your outline should attempt to tell George's story in this way. Simple as this may seem, it is not easy to do. At the hearing, people will raise points out of sequence. These points often have to be dealt with, but if you have prepared your chronology carefully you at least will have something to come back to after this other point is treated.

Draft a preliminary outline of your strategy in conducting George's hearing. What points do you want to make? What documents or witnesses will you use to help you make these points? Arrange the entire sequence chronologically.

j) Appearances

Far too often the advocate is waiting at the hearing for the client and other witnesses, only to discover that they do not appear. Make sure everyone has the address and directions. You may want to bring them there yourself. Send them a reminder note or call them a day or two before the hearing to insure their appearance. If they don't appear, be sure to ask for a postponement and try to provide a plausable excuse when you need one and when you have one.

k) Postponement

Don't be rushed into a hearing unless it is absoultely necessary. Ask for a postponement and be prepared to back up your request with reasonable reasons (*e.g.*, you are waiting for a letter to arrive which you want to produce at the hearing.)

3. Determining Whether you are Taking it all too Personally

Suppose that you call George to tell him what the strategy will be. He agrees. You ask George to come to the legal service office the next day at 2 p.m. for a meeting. He is two hours late for your meeting. When he arrives, you sense that he is either high on heroin or on alcohol. You ask him why he was late for the meeting. He is non-responsive. You leave the room for a moment and when you come back, George is gone. What do you do? Has George insulted you? Has he been disrespectful to you? Are you angry? Do you close the case? Do you go looking for George? What is your next move?

Suppose that this is not your first contact with Linda Stout, the caseworker at the Amsterdam Welfare Center. You feel that she has never been cooperative and that she is always looking for ways to "trip-up" welfare recipients that are under her charge. You don't like her. Do you think that there is a danger that your feelings toward her might interfere with your handling of George's hearing?

The chart on the following pages is a checklist of items to be dealt with by a paralegal preparing for a hearing. The chart includes items discussed thus far as well as others.

Hearing Preparation Checklist

(Check off items as completed)

(HPC)

A
ESSENTIAL ITEMS

- ☐ 1. Make one last effort to resolve the case informally without need for a hearing.
- ☐ 2. Make a formal request in writing that the agency send you, in advance, copies of all documents that it intends to rely upon at the hearing.
- ☐ 3. Make sure that the client's emergency needs, if any, are provided for while waiting for a hearing decision.
- ☐ 4. Make sure that the client wants to go through a hearing and that the client understands why a hearing is being sought and if any risks exist in asking for a hearing.
- ☐ 5. Have the client sign a written authorization permitting you to represent him.
- ☐ 6. Have the cleint sign a waiver of confidentiality statement authorizing you to examine all documents in possession of the agency that pertain to his case.

B
HELPFUL ITEMS

- ☐ 1. Find out who will represent the agency at the hearing.
- ☐ 2. Find out who will be called as witnesses, if any, by the agency.
- ☐ 3. Phone or visit the agency representative and the agency witnesses, if any, to find out as much as you can about what they intend to do at the hearing.
- ☐ 4. Find out who the hearing referee or officer will be on your case, and if possible, time your hearing so that you get the referee you want.
- ☐ 5. If hearings are new to you or if a particular hearing referee is new to you, attend a hearing in advance before yours is scheduled so that you can get "a feel" for hearing procedures and particular referees.
- ☐ 6. If possible, request that the hearing be held at a place convenient to your client and witnesses.
- ☐ 7. Bring xerox copies of all regulations, statutes and cases (relevant to your case) with you to the hearing.

☐ 7. Have the client sign an authorization which will permit you to obtain any needed doctor or hospital records.

☐ 8. Make sure that you have completed all necessary field investigation before you go into a hearing.

☐ 9. Make sure that every request that the client has made to the agency has been in writing and that you have dated copies of the requests.

☐ 10. Make sure that every denial of the client's requests by the agency has been in writing and that you have dated copies of the denials.

☐ 11. If the agency has more than one type of hearing, determine how many types exist and whether you want to ask for more than one type of hearing.

☐ 12. Make a written request for a hearing, and if possible state a date on which you would like the hearing.

☐ 13. Be very percise in the statement of the issues in your written request for a hearing.

☐ 14. Know the regulations, statutes and cases that govern your client's case.

☐ 8. In your own words, summarize the regulations, statutes and cases that are relevant to your hearing.

☐ 9. Role-play the entire hearing or segments of it with the client and your witnesses to familiarize them with the form and content of what the hearing will probably be.

15. Make sure that the agency will not retaliate against the client in any way because he asked for the hearing.

16. Make sure that the hearing officer or referee does not have a legal bias, i.e., was involved in the agency's initial decision against the client which led to the necessity of asking for a hearing.

17. Decide whom you will call as your witnesses at the hearing.

18. Familiarize your client and witnesses with the procedures of the hearing.

19. Let your client and witnesses know, generally, what kinds of questions you will want to ask them at the hearing and what kinds of questions they can anticipate the agency representative asking them on cross-examination.

20. Assemble all the documentary evidence that you will want to introduce at the hearing.

21. As to each item of documentary evidence, determine how you will lay the foundation of it by showing that it is relevant to the issues of the hearing.

22. Draft a brief outline of how you intend to prepare your case at the hearing.

23. Ask for a postponement of the hearing if you need more time to prepare.

24. Make sure your clients and witnesses know when and where the hearing is to be held.

25. Remain flexible.

In short training program, it would be virtually impossible to cover every element of the HPC. Role-playing, of course, could not be used to get at many of the preliminaries. If the trainer is using a single case or transaction to teach the other skills as well as advocacy then it should raise many of the points on the HPC if the case goes to a hearing. Most of the points will have to be discussed verbally in class, e.g., the desirability and feasibility of referee shopping. A number of written exercises are possible within the context of the common case, e.g., drafting a request for a hearing, request for documents, strategy outline etc.

Section C. Advocacy-Pressure Skills, Evaluation and Adaptation

There are seven main components to running a hearing:

1. Making sure you know who everyone is
2. Opening Statements
3. Presenting Evidence
4. Direct-Examination
5. Cross-Examination
6. Closing Statements
7. Preparing for an Appeal

During any one of these components, you may have to use a number of advocacy skills. There are twelve such skills listed in the original skills checklist (see inside page of back cover). Not only will you have to choose the skills, but also, you must be prepared to evaluate whether they are effective and if not, to shift your tactics.

1. Identify Everyone

Make sure you know what the name, title and address is of everyone in the room. You may make this list before, during or after the hearing. Sometimes the hearing officer will have everyone identify themselves before the hearing begins. If not, you may ask him to do so. Take your own notes. There may be a stenographer present who will record every word of the hearing, but it usually takes a long time before the minutes of the hearing are typed and it may be that your office will have to pay for a copy of the transcript.

2. Opening Statement

When it is your turn to begin, make a preliminary opening statement which briefly covers:

a. Your understanding of what the issues at the hearing are;

b. A brief summary of what you are going to try to establish at the hearing on behalf of the client;

c. What results you are seeking.

For George's case, what will your opening statement say? This stage of the hearing can be critical. You may find that the issues that you are prepared to discuss are not the issues that the other side came prepared to discuss, or much worse, are not the issues that the hearing officer wants discussed. This can be a major dilemma (which may not have been avoided through careful pre-planning.) There are a number of courses to follow:

i. fight to have the issues discussed that you want treated;

ii. ask for a postponement;

iii. do the best you can with the issues that the hearing officer decides will be disucssed.

Suppose that at George's hearing, the welfare department begins by making a major issue out of George's poor employment record. They want to prove that he should enter a state vocational training program. This takes you by surprise. What do you do?

3. Presenting Evidence

You may have documents or exhibits that you want considered and that you want entered as part of the record. The technical rules of evidence applicable to official court proceedings usually do not apply to administrative hearings. The test of whether you will be able to have an item admitted is usually a simple one: HAVE YOU MADE A GOOD COMMON SENSE ARGUMENT THAT THE ITEM IS RELEVANT (*i.e.*, THAT IT WILL CONTRIBUTE TO REACHING A RESOLUTION OF THE ISSUES) AND THAT IT WOULD NOT BE UNDULY BURDENSOME TO HAVE IT ADMITTED AND CONSIDERED. Make a basic "fairness pitch." If someone tries to object that it is irrelevant counter by showing how it is relevant when seen in conjunction with other evidence that you intend to introduce later. You must hustle. If someone says that the evidence is "hearsay" or if they use some other term that you don't understand, stick to your common sense, fairness argument. If you lose, then do the best you can without it, or try to introduce it later on when you think you can make a more convincing argument (in view of what has been happening at the hearing) that the item is relevant.

On the question of relevancy and reasonableness, refer to chapter ten on investigation, *supra*.

The second element of the admissibility test is: how burdensome would it be to have it admitted. You must be reasonable. You can't try to introduce 1000 pages of cancelled receipts and bills, for example, if it is not perfectly clear that every item is needed to make your case.

What evidence do you want to try to introduce at George's hearing? What problems do you anticipate in trying to introduce it all? How will you handle these problems?

4&5 Direct Examination, Cross Examination and Re-Direct Examination

You directly examine your own witnesses (*e.g.*, George) and cross-examine the witnesses presented by the other side (*e.g.*, the agency employee, Linda Stout). After you have directly examined your own witnesses, the other side can cross-examine them. After the other side has directly examined their own witnesses, you can cross-examine them:

Each side directly examines his own witnesses.

Each side cross-examines the witnesses of the other side.

When you directly examine a witness, it means that you will be the first person to ask them any questions.

Normally, one side will present their entire case and then the other side will present their case. The only time you will talk, when the other side is presenting its case, is when you are cross-examining their witnesses and vice versa.

After a side has cross-examined a witness, the other side (that originally directly examined the witness) is sometimes allowed to conduct a re-direct examination of the witness in order to cover points raised in the cross-examination.

SEQUENCE:

I. YOU PRESENT YOUR SIDE

1. You directly examine your own witnesses.
2. They cross-examine your own witnesses.
3. You can re-directly examine your own witnesses to cover points they raised in the cross-examination.

II. THEY PRESENT THEIR SIDE

1. They directly examine their own witnesses.
2. You cross-examine their witnesses.
3. They re-directly examine their own witnesses to cover points you raised in your cross-examination.

This may all sound highly technical. Some hearings are, in fact, conducted this formally. Others are not. You must be prepared to deal with both settings.

To call a witness does not necessarily mean that the person stands in a witness box or is "sworn in." In all probability, everyone will remain in his own seat and will not be asked to take an oath. Furthermore, the technical words "direct," "cross" and "re-direct" examination may not be and need not be used. Simpler language can be and often should be used:

DIRECT EXAMINATION

> "Sir (addressed to the hearing officer) I would like to introduce (name of witness) and ask him a few questions."

CROSS-EXAMINATION

> "Sir, I would like the opportunity to ask (name of witness) some questions if (name of advocate or attorney on the other side) is finished with his own questions."

RE-DIRECT EXAMINATION

> "Sir, after I asked (name of witness) some questions, Mr. (name of advocate or attorney representing the other side) asked some questions of his own, and while I was listening, a few other important points occurred to me and I would like to ask a few final questions of (name of witness) if I could."

It doesn't make any difference what labels are used, so long as you use every opportunity to make your points whenever you are allowed to do so.

GUIDELINES ON CONDUCTING DIRECT EXAMINATIONS

1. The witness on Direct Examination is your witness. You call him to give his testimony. Therefore, you are always very cordial to the witness. You never ask him anything that might embarrass him.

2. You let the witness tell his own story in his own words. His story should flow naturally from him.

3. You ask the witness to speak loudly and clearly. If the witness says something that may not be clear to others,

you ask him to state it again even though it may have been perfectly clear to you what he said initially.

4. You encourage the witness to tell you if he does not understand the question if that is the case.

5. In the introduction of the witness, you let the witness give the basic facts himself. Instead of saying, "I want to introduce....," you should ask the witness to state his name, address, occupation, etc.

6. Before you ask the witness to state what he knows about an event, you ask him questions to establish his relationship or connection to the event. If the witness is a doctor, for example, before you ask him if in his opinion the client is medically disabled, you should ask him if he has treated the patient. Before you ask a witness whether she knows whether or not the client earns money as a private baby sitter at home, you should ask the witness questions which will establish that she is a close neighbor of the client and that she often visits the client during the day. By so doing, you will be LAYING THE FOUNDATION FOR THE RELEVANCE OF THE WITNESS'S TESTIMONY.

7. It is often helpful to structure your questions to the witness so that he will tell his story chronologically from beginning to end. Discourage him from jumping from topic to topic if it is becoming confusing.

8. When the witness is stating things from first hand knowledge, emphasize the fact that it is first-hand, personal knowledge.

9. When the witness is stating things from second hand (or hearsay) knowledge, either deemphasize the fact that it is not first hand knowledge and/or instruct the witness to preface his statements by saying "to the best of my knowledge."

10. It is proper for the witness to state conclusions or opinions, but you should structure your questions so that you first get out all of the facts on which the witness has relied on forming his opinions or conclusions, never let them be stated without the supporting facts.

11. Be aware of the danger of open-ended questions such as, "tell us what happened." Very often such questions are invitations to ramble on. Confusion can result. The more effective kind of questions are those that are structured to require a brief and concise answer. Use an open-ended question only when you are sure that the witness will be able to handle it.

12. Very often a witness, particularly the client, will have a need to unvent his feelings, to get a lot off his chest. When this happens, he often gets emotional and raises issues that may not be relevant to the proceeding. You must make a decision on whether to permit this to happen. On the one hand, it is the client's hearing and as a matter of fairness, he should have the opportunity to speak his mind. It can be very frustrating if questioners keep steering him away from what he has been waiting a long time to say. On the other hand, you do not want the client to say anything that may be damaging to his own case. Psychologically, you must understand the witness. The best strategy is to determine in advance whether the witness wants to or is inclined to get emotional. If so, then the responsibility of the advocate is to make the witness aware of the consequences of this occurring at the hearing. In the final analysis, it is the choice of the witness; it is his case that is on the line, not yours.

13. You may want to introduce certain documents into evidence after you have gotten the witness to say something will demonstrate that the document is relevant (i.e., you establish a foundation for the documents through your questioning).

Once the foundation has been laid, you introduce the document (i.e., ask the referee to make it part of the record and give a copy to the agency's representative) and resume your direct examination of the witness.

14. When you are finished asking your questions, you may want to ask the witness if he has anything else that he wants to say.

15. The hearing officer may interrput you with questions of his own. He, of course, has the right to do so. You may, however, want to politely tell him that the subject-matter of his question will be treated by you in "just a few moments."

16. The advocate or attorney or agency representatives for the other side may try to interrupt you with questions of their own. Normally, they do *not* have this right. Politely ask the hearing officer if you could finish your own questions before the other side asks any questions of their own.

17. Try to anticipate what the other side will want to question your witness about when it is their turn, and try to cover these points in your own direct questioning.

18. Except the unexpected. Your witness may say things that you never anticipated. You will have to be flexible enough to deal with what comes your way.

GUIDELINES ON CONDUCTING CROSS EXAMINATION

1. Be courteous and cordial to the witness even though you may be tempted, and indeed baited, into attacking the witness personally.

2. Be sure that it is clear to you who the witness is and what relationship he has to the events at issue in the hearing. This may not have been clearly enough brought out while this witness was being directly examined by the agency representative.

3. If during the direct examination, this witness said something based on second hand knowledge (or if it was not clear to you whether it was said from personal or second hand knowledge), ask about it on cross examination and be sure that your questions force the witness to admit that no first hand knowledge exists when that is the case.

4. If during the direct examination, this witness stated conclusions without stating any facts to support the conclusions, then ask this witness on cross examination about these conclusions and the underlying facts that support them according to the witness. Do *not* use this tactic however, if you are absolutely certain that the witness has valid facts to support the conclusions or opinions even though they were not brought out on direct examination.

5. If it is a fact, or if you are reasonable in suspecting that it is a fact, that the witness has a bias (something personal) against the witness, you should try to bring this out on cross examination. This, of course, will be very difficult and somewhat dangerous to do. No one will want to admit that he is not being objective (i.e., that he has a bias.) Probably the best that you will be able to do on cross examination is to raise some doubts about the objectivity of the witness's testimony even though you may not be able to conclusively establish a bias.

6. The same point made above about bias against the client applies to bias in favor of a client. A witness can lose objectivity because of partisanship and friendship as well as because of hostility.

7. If the witness is reading from any papers during cross examination, politely ask the witness what he is reading from and request that you be shown a copy and, if needed, be given a few moments to read it over before you continue your cross examination. If the witness is reading from a document that was not sent to you before the hearing (and you requested that they send you all the records that they were going to rely upon at the hearing) then you should object.

8. Very often the witness will be reading from official agency records. These records often refer to statements made by individuals who work for the agency but who are not present at the hearing. The agency representative will try to have these records introduced into evidence. It has already been said that you should bring out, through your questioning, the fact that the witness is not speaking from first hand knowledge in referring to those records of which he is not the author. In addition, you should complain that the authors of the statements in the records should be present at the hearing as a matter of fairness so that you can confront and cross-examine them. If you are not allowed to do this, then you should request that such statements not be allowed to become part of the hearing proceeding.

9. If during cross-examination, the witness has made highly prejudicial statements (e.g., "the client is a thief"), then you should ask that the referee order a decision in favor of your client on the grounds of undue prejudice.

10. If during cross-examination, the witness raises points that surprise you (and if it was not due to sloppy preparation that you were surprised), then you should ask the referee to postpone the hearing to give you more time to prepare the case of the client to cover the matter that surprised you.

11. In court room proceedings, it is often the rule that you cannot raise new matter on cross-examination. You can only cross-examine a witness within the scope of the testimony

this witness gave on direct examination. If for example the witness only testifies about food stamp eligibility on direct examination, the lawyer conducting the cross examination cannot ask him questions about an invasion of privacy claim since this claim is outside the scope of the direct examination. This technical rule almost never applies to administrative hearings, although you should be aware of it since counsel for the agency may improperly try to apply the technical rule against you while you are cross examining a witness. You do not have to limit your questioning on cross examination to the scope of what was brought out by the other side on direct examination. Normally, however, it is a good practice not to raise new matter on cross examination unless you have to. Use direct examination to make all of your major points and use cross examination as a vehicle to buttress the points you have made on direct examination.

12. On cross examination you will be questioning witnesses who are normally hostile to your client, although not necessarily. Do not antagonize unnecessarily. You may find that the witness on cross examination is willing, either consciously or not, to make statements that are very favorable to your client.

13. As a corollary to the above point, don't be unduly aggressive or defensive. Make your case positively by direct examination, and don't rely exclusively on establishing your case negatively by trying to show on cross examination that the witnesses for the other side are fools.

14. Don't help the other side by asking witnesses questions on cross examination that you know (or reasonably anticipate) will produce damaging statements.

15. You don't have to conduct a cross examination of a witness if nothing he said on direct examination is unclear to you and the referee, or if you don't think that you will be able to get the witness to contradict himself or say anything that would discredit his position in

any way. In such a case, it would be better to rely solely on what you were able to establish on direct examination.

16. Remain loose and flexible; anticipate the unexpected.

6. Closing Statement

At the end of all of the questioning and evidence presentation, ask the hearing officer to let you sum up with your version of what happened. State what you think you proved, state what you think the other side failed to prove. Specifically, state what result you seek for the client. If you think that the hearing was inconclusive because you were unfairly surprised by what the other side did or because the other side failed to bring to the hearing people who are sufficiently acquainted with the case, then:

a. ask for a decision for the client because of these factors; or

b. at the very least, ask for an adjournment so that the hearing can resume after you have had a chance to study the matter that the other side unfairly surprised you with, or after the other side brings to the hearing individuals who should be there.

7. Preparing for an Appeal

During the hearing the hearing officers and the other side may have done things that you disagree with. Make notes of all of these items. Also make sure each time you disagree that you state to the hearing officer that "you want to state you objection for the record." If a transcript is made of the hearing, it will be clear that you make an objection and what your objection was. Your supervisor may want to appeal the decision later on in court. Whenever such appeals are taken, the judges usually require that objections and complaints have been raised during the hearing before they will even consider the objection or complaint on appeal in court. There is a close relationship between what happens at the hearing and a possible subsequent court appeal. To a very large extent, you are responsible for "making a record" for the lawyer to use on appeal.

Lawyers who have litigated cases following adminstrative hearings should acquaint you with the mechanics of court appeal and with their version of what a good hearing record should constitute. What kind of information would they like to see in it? What kinds of damaging statements made by clients and witnesses for clients would they like to see omitted or toned down? If possible, you should be shown a copy of an old appellate brief which cites testimony taken at an administrative hearing so that you can see the connection between the hearing and the court action.

In some administrative hearings, an advocate waives an objection that he has to what takes place at the hearing unless he specifically objects on the record. A waiver can mean that the lawyer cannot raise the point on appeal in court. Whether such a waiver rule applies is a question of local practice. Your trainer must determine the answer to this question so that he can build it into or out of the training program. If it does apply, then you must be familiar with the techniques of objecting for the record.

A more serious problem concerns the doctrine of exhausting adminstrative remedies. With few exceptions, courts will not allow the client to appeal an issue in court unless the agency involved in the issue has been given the opportunity to resolve the issue within the agency's own hearing structure. For example, at a welfare hearing a client might claim that she failed to receive a check that was due her and that her caseworker is harassing her with unauthorized home visits. At the hearing, if the only issue discussed concerns the check, then the visitation issue cannot be appealed in court since as to this issue the client has not exhausted his administrative remedies. Another hearing may have to be brought on the visitation issue before it can be raised in court. You must be aware of this problem as a matter of issue control.

Section D. Recording

After the hearing, you should have a set of notes that will cover the main points of the hearing. If a transcript of the hearing was made and your office orders a copy, then there may be no need for you to have taken extensive notes. Even if a transcript was made and ordered, however, you must still record what happened in the client's file. Someone else in the office should be able to go to the file and find your notes on the hearing. They should be able to read the notes and quickly determine what issues you raised at the hearing, what took place at the hearing and what resulted from the hearing.

EVIDENCE FOR PARALEGALS

Since most administrative hearings employ informal procedures, it might be argued that there is little need to teach the laws of evidence. There are at least two reasons, however, why evidence should be covered:

1) knowing some of the laws of evidence is often helpful and sometimes critical at hearings;

2) cases that have been the subject of hearings sometimes find their way into court where the laws of evidence are of paramount importance; for a paralegal to assist the lawyer in bringing such cases to court he must understand some of the basic rules of evidence.

How should evidence be taught? A number of options exist:

1) The trainees could be issued a hornbook on evidence (*e.g.*, *McCormick's* text); they could be assigned sections of it in connection with class lectures.

2) The trainer could write his own hornbook on evidence for paralegals (as of the moment, no such text exists).

3) Develop ways in which to establish the experiential foundations of the rules of evidence as an aid in teaching the basic evidentiary rules.

The third option is developed here. (In the best of worlds, the third option should be used in conjunction with the second). The basic topics that need to be covered are as follows:

1) definition of evidence
2) distinction between evidence and proof
3) relevancy
4) burden of proof
5) statute of frauds
6) documentary evidence
7) hearsay and the exceptions
8) privileges
9) admissability
10) exclusionary rules
11) prima facie case

Subsequent sections of this text will deal with the use of evidence at administrative hearings.

There are good many technical words and phrases in the law of evidence. Most of them, however, have common sense or reasonableness foundations. They are not necessarily all alien to everyday life. This connection should be developed.

Beginning on the following page there is a dialogue on evidence which can either be distributed to all the trainees and discussed in class, or kept by the trainer and used as his frame of reference in leading a class discussion on the experiential foundation of some of the rules of evidence.

The dialogue involves Tom and Sam arguing about what Sam's son Bill did or did not do to the flower bed of Tom. Following certain statements by either Tom or Sam, there will be brackets containing, in italics, positions taken by a mythical attorney in a courtroom. The statements of the attorney are meant to parallel those of Tom or Sam, but in the jargon of rules of evidence.

The pedagogic hypothesis of the dialogue is that it will assist the trainer in beginning the process of communicating technical rules to the trainees.

Dialogue on Evidence

SETTING

[A phone conversation between Tom and Sam. The statements in italics are those of an attorney in the courtroom. His statements translate the conversation of Tom and Sam into the jargon of the law of evidence.]

Tom: Hello Sam, this is Tom. I want to talk to you about your son, Bill.

> *[Your honor, we are ready with the case of Thomas Adams v. William Smith.]*

Sam: What's the problem?

> *[Can you state a cause of action?]*

Tom: Your son is up to no good. My beautiful roses are ruined. That boy of yours has some explaining to do.

Sam: Why should he have to do any expalining? If you think that he's done anything wrong, then show it to me - you explain it.

> *[Your honor, the burden of proof is on the plaintiff, Thomas Adams, and not on the defendant, William Smith. It is Mr. Adams who must establish that the defendant maliciously destroyed the property in question.]*

Tom: I had a call this morning from Peter Riordon and he told me that he saw your son running in my yard.

Sam: Never mind Riordon. I'll speak to him myself. I want to hear from you what you know and not what others have told you.

> *[Objection, your honor. The alleged statement by Mr. Riordon is hearsay. It is inadmissible. Mr. Riordon is not in this court today and therefore he is not subject to confrontation and cross-examination. If counsel for the plaintiff wishes to introduce into evidence statements of Mr. Riordon, then he should be called in as a witness. This court would become a shambles if hearsay evidence could be introduced left and right. I move to strike the reference to Mr. Riordon and request that the court instruct the jury to disregard what was said in reference to Mr. Riordon.]*

Tom: Well, right square in the middle of my roses, I found your son's basketball. That's enough proof for me.

Sam: Nonsense! That doesn't prove a thing. You haven't got a leg to stand on.

> *[Your honor, we would submit that the plaintiff has not established a prima facie case. He is wasting the court's time. There isn't even enough evidence to allow this case to go to the jury. We respectfully move for a directed verdict for the defendant.]*

Tom: Look, this all happened last Tuesday on the day of the parade. I was in the back.....

Sam: The parade wasn't on Tuesday. It was on Monday.

Tom: No it wasn't, damn it. It was on Tuesday. What do I have to do, get a letter from all of the marchers to show you when the parade was? Why should I have to take time trying to prove when the parade took place? Any fool knows it was Tuesday.

> *[Your honor, there should be no need to take the time of the court trying to establish the date of the parade. Such an event is a matter of common knowledge. We request that the court take judicial notice that the date of the parade was Tuesday. Plaintiff should not be required to spend time trying to prove an obvious fact.]*

Sam: All right, all right. If it makes any difference, I'll agree for the sake of argument that the parade was on Tuesday.

> *[Your honor, counsel for the defendant will agree to stipulate that the parade was on Tuesday so that there will be no need to hear any evidence on the issue.]*

Tom: Fine. On Tuesday, the day of the parade, I was in the backyard. I saw your son throwing stones at the marchers. He had the devil in him that day and it was on the same day that my flowers were ruined.

Sam: What my son did or did not do at the parade has absolutely nothing to do with your flowers.

[Your honor, I object to this testimony. The events of the parade are immaterial and irrelevant to the primary issue of this case, namely the charge of malicious destruction of property.]

Tom: It does have to do with the flowers. Your son is a roughneck, period.

Sam: Stop trying to make my son out to be a monster!

[Your honor, we move for a mistrial. The testimony thus far has been riddled with prejudicial statements. Plaintiff is trying to prove his case by charcter assassination. The minds of the jury have been prejudiced against the defendant because of these statements. Instead of proving his case by relevant facts, the plaintiff has restored to immaterial, irrelevant and prejudical allegations.]

Tom: Well, if you won't take my word, then maybe you'll take the word of Reverend Alex who saw Bill the other day and Bill told him that he was in my yard and damaged my flowers.

Sam: Oh, is that what Reverend Alex told you? It really surprises me that Reverend Alex would go around saying things like that. I'll want to see the Reverend myself before I say anything more about his involvement in this.

[Your honor, the testimony pertaining to the alleged statements of Reverend Alex is inadmissable on two grounds. First, it is hearsay. Second, whatever Bill may have told Reverend Alex is privileged. The priest-penitent privilege is as sacred as the attorney-client privilege and the doctor-patient privilege. Statements made by individuals to their clergymen, doctors and lawyers are privileged. They cannot be introduced into evidence even if the clergyman, doctor or lawyer tries to introduce them. If this court or any court allows such confidential statements to be admitted into evidence, then citizens will be discouraged from ever confiding in clergymen, doctors or lawyers

out of fear that such confidences may be admitted into evidence later on.]

Tom: Well, my daughter was visiting me at the time and she saw Bill and asked him if he was in my flower bed and he ran away.

Sam: I don't care what your daughter says.

[Objection on the ground of hearsay, your honor.]

Tom: If he was innocent, why did he run away?

[Your honor, although it may be hearsay, there is a well know exception to the hearsay rule. By running away, the defendant was in effect declaring or admitting his own guilt. This was a declaration against his own interest. Such declaration are exceptions to the hearsay rule. The testimony is admissible.]

Sam: Hogwash!

[Your honor, the exception to the hearsay rule does not apply to this case. If it is established that Bill ran away from Mr. Adams' daughter, it would not necessarily amount to any such declaration of guilt. Maybe he running to catch a bus and never heard his daughter at all. The hearsay rule does apply to this situation and we move to strike the reference to the statement of the plaintiff's daughter.]

Tom: Well, I guess there is no sense in talking to you. You'll be getting a gardener's bill from me in the mail shortly for $85.00.

[Your honor, we move for a judgment for the plaintiff with actual damages of $85.00 and punitive damages of $100.00 because of the defendant's recklessness, plus court costs.]

Sam: Nonsense. You pay that gardener every year anyway. You're not going to get me to pay bills that you have anyway.

[We object to the plaintiff's attempt to introduce this bill. This documentary evidence is inadmissible. First, it is hearsay since the gardener is not in court to be confronted and cross-examined by the defendant. Secondly, no foundation has been laid by plaintiff to establish the relevance of the bill before introducing it into evidence. We have not been told when the gardener provided his alleged services. We have not heard any evidence that the person writing the bill is a gardener at all. In short, no foundation has been laid for the admission of this bill.]

Tom: Well if that's the way you feel about it, I'll see you in court!

The dialogue on evidence can be used by the trainer to launch extensively into the rules of evidence or simply as a vehicle to touch on some of the major concepts of the substantive law of evidence. The text is either background material that substantially stands on its own or it is the starting point for a much fuller elaboration by the trainer on the points covered. Topics such as hearsay could obviously be examined in great detail. Other evidentiary rules such as the statute of frauds could also be added. If substantial time cannot be devoted to this topic, then three or four hours could be spent on group discussions on several of the major issues raised by the dialogue.

LABEL QUIZ

The trainer should adminster the Label Quiz to each trainee. He can either call out each statement and ask the class to label it, or he can hand the quiz out to each trainee for written answers. The purpose of the quiz is to get the trainees in the frame of mind to analyze statements of witnesses.

As to each statement by the witness, answer two questions:

A) Is the witness talking from first hand (personal knowledge), second hand knowledge, third hand?
B) Is the witness stating a fact, an opinion, a conclusion?

1) "I receive welfare."

2) "I told my caseworker to call me before she makes a home visit."

3) "My caseworker is rude."

4) "My caseworker called me a liar."

5) "The welfare regulations say that I am eligible."

6) "My son told me that the caseworker reported me to the supervisor."

7) "I need welfare."

8) "I can't pay my rent."

9) "My mother can't pay the rent." ______

10) "I'm too sick to join the job training program" ______

11) "That job does not suit me." ______

12) "My husband does not contribute to the support of my family." ______

13) "I did report to the job employment agency." ______

14) "I was told that no jobs were available." ______

15) "You must give me seven days notice before you terminate me." ______

16) "I am entitled to a Fair Hearing." ______

17) "Welfare is a right and not a privilege." ______

18) "She never called me like she said she would." ______

19) "I received a letter from the employment agency telling me they lost my file." ______

20) "She never explained it to me." ______

INTRODUCING AND OBJECTING TO DOCUMENTARY EVIDENCE AT ADMINISTRATIVE HEARINGS

This section contains a series of documents that the trainees should be asked to introduce, object to, or otherwise refer to at an administrative hearing. There are few, if any, absolute norms on introducing or objecting to documentary evidence at hearings. It would be appropriate, however, to list several generally applicable guidelines:

1. Every paralegal must determine in advance whether the agency hearing in question utilizes any formal hearing procedures. This is done by checking with advocates who have already conducted hearings before this agency, reading any regulations of the agency on its hearing procedures, attending a hearing of the agency as an observer, etc.

2. At most hearings, the procedures are informal. No technical rules of evidence apply.

3. At hearings where the procedures are informal the normal tests of whether an advocate will be able to introduce items of evidence into the proceeding are as follows:

    a) The item must be relevant to the issues of the hearing.

    b) The advocate normally must demonstrate the relevance of the item by laying a foundation for it before trying to introduce it.

    c) An item is relevant if it would reasonably assist a party to prove or disapprove an issue at the hearing.

d) Reasonableness is largely a matter of logic and common sense.

e) An advocate cannot introduce such quantities of evidence that would unduly burden the conduct of the hearing.

f) Advocates will not be allowed to be unduly repetitive in the introduction of evidence.

g) When there is doubt as to the relevancy of an item that an advocate wishes to introduce, it is sometimes persuasive for the advocate to argue that he should be allowed to introduce the item as a matter of fairness.

h) When there is doubt as to the relevancy of an item because a proper foundation has not been laid for it, it is sometimes persuasive for the advocate to argue that the item should be introduced now although the full relevance of the item will not be made clear until later in the proceeding after he has introduced other evidence.

4. If the advocate is trying to object to the introduction of documentary evidence by the representative of the agency, the following guideliens are applicable:

   a) If the advocate has never before seen the document that the other side is trying to introduce, he objects on the ground that the agency should have sent him a copy of this document in advance of the hearing.

   b) If the agency representative is referring to a document without actually introducing it (i.e., by giving a copy of it to the referee and to you), then you object. You argue that the agency representative either introduce it or stop referring to it.

c) Whenever the agency representative or his witness is reading from a document, you ask to see it before he continues reading and before he tries to introduce it into evidence so that you will be given a fair opportunity to object to its introduction.

d) Even though the formal rules of evidence may not apply, you can try to argue them if it is to your advantage. For example, you can object to the use of hearsay by the agency representative.

e) You can argue that items attempted to be introduced by the agency representative are irrelevant or that no foundation has been laid to establish relevance.

f) You can argue that the agency's representative is being unduly repetitive in the items introduced.

g) You can argue that the items being introduced by the agency's representative are prejudicial because they attack the character of your client and are irrelevant.

With these guidelines as a background, the trainees should be asked to introduce the documents presented on the following pages. The setting is a welfare fair hearing and for most of the documents, there should be a person playing the role of the referee who will decide on the admissability of the item, an advocate for the client who will be trying to introduce an item or object to an item being introduced by the other side, and an agency representative who will either be trying to introduce an item or object to an item being introduced by the client's advocate. In brackets, there will be instructions on the setting of the hearing.

[Welfare Dept. wants to terminate aid because Mrs. Thomas has not been diligently looking for a job from 1/72-6/72. Mrs. Thomas wants to argue that she has been ill and that she has been looking for work to the best of her ability. The advocate for Mrs. Thomas wants to introduce the documents on the following six pages. The agency representative wants to introduce the final two items. The date of the hearing is 10/1/72. The agency representative is Mrs. Thomas's caseworker, Dorothy Petrone.]

970

Lincoln Business School
304 Terry Avenue
Baltimore, Maryland 24109
392-121-0721

February 10, 1972

Mrs. T. Thomas
3210 4th Street
Baltimore, Maryland 04109

Dear Mrs. Thomas:

Thank you for your letter inquiring about our bookkeeping courses. We do not have scholarship programs. The fee for the six months is $450.00 and it cannot be waived.

If we can help you any further, please let us know.

Sincerely,

Mary Todd

Mary Todd
Admissions Office

97p

Federal Trade Commision
One Federal Plaza
Washington, D. C. 20036

March 8, 1971

Mrs. Mary Thomas
3210 4th Street
Baltimore, Maryland 04109

Dear Mrs. Thomas:

We do not have a branch office in Baltimore. If you are interested in a typing position, you will have to come to our Washington, D. C. office to apply.

Sincerely,

Samuel Peterson

Samuel Peterson
Personnel Director

97q

ABC Trucking Co.
407 9th Avenue
Baltimore, Md.   24309

Mrs. Mary Thomas
3210 4th Street
Baltimore, Maryland   04109

Dear Mrs. Thomas:

We regret to inform you that we must terminate your employment as of February 5, 1972. If you recall when we hired you on January 30, 1972 we informed you that your position was temporary due to budget uncertainties. It was a pleasure having you with us in the claims division.

Sincerely,

Ralph Adoo
Division Chief

TOTAL HOURS	YOU EARNED AND WE PAID →			TOTAL	WE PAID OUT THESE AMOUNTS FOR YOU						NET AMOUNT	PERIOD ENDING	NUMBER
	REGULAR	OVERTIME			F.I.C.A.	FEDERAL WH/TAX	STATE WH/TAX			HOSP.			
43	113 22			113 22	8 21	15 30	3 20				86 51	2/5/72	2106210

EMPLOYEE'S STATEMENT OF EARNINGS AND DEDUCTIONS. RETAIN.

ABC Trucking Company

97s

Sampson Drug Stores
4110 South Ave.
Baltimore, Md.   24100

261-4032
May 15, 1972

Mary Thomas
3210 4th Street
Baltimore, Maryland   04109

Dear Mrs. Thomas:

Just a note to let you know that the precription you ordered is ready and can be picked up at your convenience.

Regards,

Ed Madison
Manager

M. M. Greenberg M. D.
701 Forsyth Street
Baltimore, Maryland 2410[illegible]

421-4092

February 10, 1972

Mrs. Mary Thomas
3210 4th Street
Baltimore, Maryland 04109

Dear Mrs. Thomas:

You have bills outstanding amounting to $142.17. This is the third notice we have sent you. Kindly give this matter your immediate attention.

Sincerely,

M. M. Greenberg, M.D.

Baltimore Welfare Dept.
312 East 7th Ave.
Baltimore, Md. 24308

Memo to: File
Re: Mrs. Mary Thomas
Case #324109-B
Unit 7
Caseworker: Dorothy Petrone

1/2/72: Called recipient to inform her of her responsibility to obtain work.

1/30/72: Visited recipient; she had not been diligently seeking employment.

3/10/72: Told recipient to register at Maryland State Employment Agency. I have been told by the Agency that she has not done so.

3/15/72: Recipient told me that she had headaches; did not seem serious.

Submitted by:

D. Petrone
5/1/72

97v

Baltimore Welfare Dept.
312 East 7th Ave.
Baltimore, Md. 24308

Mrs. John Thomas
3210 4th Street
Baltimore, Md. 04109

5/12/72

Dear Mrs. Thomas:

This is to inform you that we are contemplating the termination of your welfare grant for failure to diligently seek employment. If you do not take appropriate steps to secure employment within the immediate future we will have no recourse but to process the termination.

Sincerely,

Dorothy Petrone

Dorothy Petrone
Caseworker

OBJECTIONS QUIZ

Instructions: Read each situation. In the space provided, state whether you would raise any objection, what the objection is and the reasons for your objection.

Abbreviations: "P" stands for the paralegal representing the client at the hearing; "C" stands for the client; "W" stands for the witness; "AR" stands for the agency representative; "DE" stands for direct examination; "CE" stands for cross examination.

#1. On DE, a W of the AR says, "The C is a liar."

#2. On DE, a W of the AR reads from a piece of paper. The P is not sure what the paper is.

#3. On DE, a W of the AR says that he was told by another caseworker that the C had a secret bank account. On CE of this same W, what line of questions should the P take?

#4. Before the hearing began, the P requested the agency to send him all the documents that the agency intended to rely on at the hearing. The agency never did so. Does the P refer to this at the beginning of the hearing?

#5. Same as #4 above, except that when P mentions at the beginning of the hearing that the records were never sent, the AR hands him over 20 pages of records.

#6. Same as #4 above, except, that when P mentions at the beginning of the hearing that the records were never sent, the AR responds by saying that the records are confidential.

#7. On DE of a W of the P, the AR keeps interrupting with questions of his own.

#8. While the AR is talking to the referee, he uses some legal language that the P does not understand.

#9. While the C is under DE by the P, the C calls the AR and all the employees of the agency "bastards."

#10. While talking to the referee, the AR hands him a paper which announces a new regulation of the agency.

#11. On CE of the C by the AR, the AR keeps trying to put words into the C's mouth and won't let the C speak for himself.

Chapter Fourteen

Advocacy and Dealing With Professionals and Bureaucrats

Section A. The Problems Encountered

One of the primary aspects of a paralegal's job is dealing with professionals and administrators. This frequently is so in informal and formal administrative advocacy. He will not always be relating to line-staff personnel of administrative agencies. He will not always be calling the secretaries and clerks of the managers. Some of the the upper echelon that he will be confronting include:

1. Attorneys representing the other side of an office case
2. Legal Service attorneys generally
3. Private attorneys generally
4. Attorneys that work for administrative agencies even though they may not be active on your case
5. Doctors that administer hospitals
6. Accountants
7. Public-school teachers
8. Directors of administrative agencies
9. Assistant Directors of agencies
10. Unit supervisors at agencies, *etc.*

There are a number of situations which require a paralegal to deal with such individuals. Ask the trainees to identify the times that they have dealt with them. What were they trying to accomplish:

1. You are simply trying to get information generally.
2. You wanted information about a particular client or incident.
3. You want to complain up the Chain of Command (*supra* chapter seven).
4. You want to "pick their brain" as a way of helping you solve a problem or as a way of helping you take some "short cuts" to solving a problem.

5. You are advocating on behalf of a client.

6. *etc.*

Now ask the trainees to identify the problems that they have had in dealing with professionals and administrators. Their responses might look something like the following:

a. They are never in, or at least this is what their secretary tells me.

b. They are always too busy to talk to me.

c. They always try to get me to talk with their subordinates.

d. They always speak in jargon that I don't understand.

e. They always tell me "we're working on it."

f. They always tell me that they can't help me until they finish some research project and study the results.

g. They always tell me that their hands are tied because of some rule that is imposed on *them*.

h. They always tell me what the rule is and that the effect of making an exception in my case would destroy the entire office system.

i. *etc.*

After you have gotten the trainees to list as many problems as they can (and you have suggested others to them) categorize the list of problems in some order *e.g.,* in the order of the most common to the least common problems; in the order of the most frustrating to the least annoying problem, *etc.* Be sure the list of categories is plainly visible to everyone.

Section B. Strategies in Overcoming these Problems

What ways have the trainees used to overcome these problems? What appraoches do they feel would be effective? Set up some role-playing experiences that will assist the trainee in focusing on possible skills. Some of the technique options are as follows:

a. I kept the pressure on until they finally agreed to see me.

b. I "feed their ego" by letting them know that I know that they have a superior education and heavy responsibilities. Then I "hit them" for what I want.

c. I insist that they break down their technical language so that I can understand it.

d. I just refuse to believe that their hands are tied by rules made by others. I know that rules have to be interpreted and that *they* have to do the interpreting.

e. I suggest to them that it is not appropriate for them to hide behind their ivory tower of research and rules. I suggest to them that they "come down" and confront the public.

f. I explain to them that my case is unique and that it's a matter of common-sense fairness that an exception to the rules be made in my case.

How do such responses fit into the basic advocacy checklist (see inside page of back cover)?

Any one particular approach can become the subject for an extensive class discussion. Once such approach is the "exception" technique. Professional people, by and large, have been trained to individualize cases. Their approach is to look at each individual as a unique entity calling for a unique response. Bureaucrats and administrators, on the other hand, tend to generalize. They tend to cluster cases into groupings. They focus on the similarities of cases rather than on their uniqueness. The pressures of their responsibilities provide an incentive to treat everyone alike and to block out cases that may call for an exception. They find a way to fit the exception into the general rule.

The breakdown is not this simple, however. Although bureaucrats tend to generalize, they would be insulted if it was suggested to them that they don't make room for exceptions. Bureaucrats want to project the image of both worlds: they are administrators who accurately classify cases into large categories and they are professionals who accurately make exceptions when exceptions exist. The paralegal advocate can take advantage of this tension. When making the pitch that *his* case calls for an exception in the face of the administrator's insistence on applying the general rule, the paralegal can emphasize the bureaucrat's role as professional and try to "nudge" him into opening his mind to see the factors that make his case unique and call for an exception. If this doesn't work and the bureaucrat insists on applying the general rule, the paralegal can try to contact other people in the agency who are more "tuned into" finding uniqueness in cases. He can contact the career professional social worker, the research unit, the attorneys in the agency, *etc.* who may be more receptive to finding uniqueness. The paralegal may be able to build his case within the agency and then go back to the bureaucrat. Or better still, the paralegal can try to contact other individuals *first*, who will support his argument for an exception and then go to the bureaucrat with this ammunition.

The process can work in reverse as well. Suppose that the agency is trying to make an exception out of the client's case, the result of which is that the client is not getting a particular service. Here the strategy of the paralegal is to focus on the similarities of the client's case with other cases in order to fit it into the general rule. The paralegal tries to communicate the message to the bureaucrat that the latter is "overdoing" the professionalizing process of finding uniqueness.

Have the trainees apply these approaches in hypotheticals such as the following:

A. Extra food stamps are given to welfare recipients if the head of the household is a parent raising children alone without the other parent being present. A client wants extra food stamps but is told she does not qualify because her husband lives with her. Her husband is a cripple who can't work or leave the house without special medical equipment.

B. Emergency food stamps are given to welfare recipients who find themselves the victim of natural disasters (*e.g.*, floods) and who otherwise have no readily available means of getting food. A client has been burnt out of her apartment. She applies for emergency food stamps but is denied them because her sister lives only ten miles away and the client should be asked to go to her for help first.

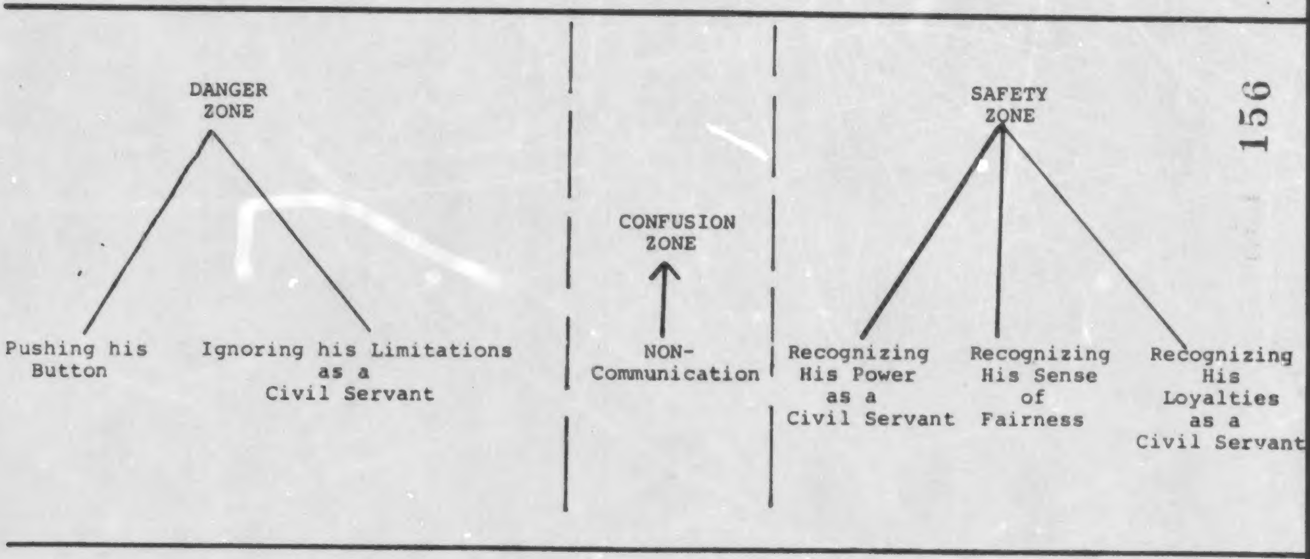
How would the trainees handle these situations? Do they see any differences in them? In the first situation, is the client trying to prove that her case should be seen as an exception to the general rule? In the second case, is the client going to argue that her case is not an exception to the general rule? What techniques should be used? What guidelines/checklists can the trainees draft as a result of analyzing such situations?

The critical lesson that needs to be learned is that RULES DON'T EXIST UNTIL THEY ARE INTERPRETED BY HUMAN BEINGS IN INDIVIDUAL SITUATIONS, AND THAT THERE IS OFTEN A GREAT DEAL OF ROOM FOR ARGUING THAT THE RULE SHOULD BE INTERPRETED IN YOUR FAVOR. Administrative staff usually has great DISCRETION in interpreting rules even though they don't want you to know this. The paralegals must never take rules on their face value. The line staff will probably insist that the rule is rigid and cannot be deviated from. The paralegal must resist this. If it doesn't work at this level he should go up the Chain of Command to make a pitch to the bureaucrats/professionals that his case calls for special attention.

CIVIL SERVANT PERSONALITY ZONES
CSPZ

Every contact that a paralegal has with a civil servant can be charted according to the Civil Servant's Personality Zones (CSPZ). The CSPZ is printed on the following page. Every trainee should have a copy of this outline. The trainer may want to write it on a large chart which is plainly visible to all the trainees.

CIVIL SERVANT PERSONALITY ZONES
CSPZ


DANGER ZONE
Pushing his Button
Ignoring his Limitations as a Civil Servant
CONFUSION ZONE
NON-Communication
SAFETY ZONE
Recognizing His Power as a Civil Servant
Recognizing His Sense of Fairness
Recognizing His Loyalties as a Civil Servant

EXPLANATION OF CSPZ.

DANGER ZONE:

Pushing His Button

Everyone has a "button" that can be "pushed." The effect of pushing or pressing someone's button is to antogonize or enrage him. There are certain things that set some of us off. When you have pushed someone beyond the brink, you have pressed his button. We each have our own individual buttons. Some of us can't stand being rushed; some hate to be talked down to; some are infuriated at the suggestion that they don't know how to do their job, etc.

Ignoring His Limitations as a Civil Servant.

Agencies usually are enormously complex institutions. Everything is streamlined and systematized, at least in theory. Certain papers and forms are handled by certain people. Service is sometimes provided along an assembly line. The client moves from desk to desk, window to window, civil servant to civil servant. Each civil servant has limited powers and he will tend to be irritated if the boundary lines of his responsibility are not respected. Failing to respect them might even push his button. Suppose, for example, that a caseworker is assigned to provide job counseling service to welfare recipients. A paralegal who asks this caseworker to help him qualify a client for welfare (the job of the intake worker) could be operating within the danger zone. Another example: a paralegal asks a caseworker to permit a client to receive a certain service even though, according to the rules, the caseworker's supervisor must make such a decision.

CONFUSION ZONE:

A paralegal in this zone is simply not communicating with the civil servant. They are on different waive lengths. This may be the fault of the paralegal, the civil servant or both.

SAFETY ZONE:

Recognizing His Power as a Civil Servant

Although a civil servant has limited power, he does have some power. He would like to have this power acknowledged and respected. He would like to know that the paralegal feels that he is important; that without him, the office would have to shut down. This is not to say that the paralegal must be constantly flattering the civil servant. Such conduct could backfire and put the paralegal into the danger zone.

Recognizing His Sense of Fairness

Everybody wants to appear to be the generous, fair judge. A civil servant is no exception. He must make decisions since he is often confronted with facts that are somewhat out of the ordinary. The paralegal who appeals to the civil servant's sense of fairness in such situations is usually within the safety zone.

Recognizing His Loyalities as a Civil Servant

Simply because a civil servant works for an agency, it does not necessarily mean that he subscribes to the party line of the agency. He may have a number of loyalities within and without the agency which may complement or conflict with each other. He may have loyalties to the employee union of the agency, to the line employees of his unit, to the supervisors, to legislators, to the press, etc. He may adhere to a liberal or to a conservative philosophy of what the agency is or should be. The paralegal who is able to identify these loyalties and advocate for his contact within the context of them is most assuredly within the safety zone.

Like the ESC discussed earlier (see page 44a supra) the CSPZ is a tool to assess role-playing.

Whenever trainees engage in role-playing involving agency employees during the training, they should refer to the CSPZ. As the paralegal brings to bear the techniques of informal advocacy, he should assess himself and be assessed according to the zone or zones that he is in or that he shifts into and out of. The objective is to develop in the trainee a facility to "size-up" the civil servant with whom he is dealing to the end that he will develop the maneuverability to shift from zone to zone of the civil servant's ego in order to achieve what he is after.

Care must be taken by the trainer to insure that the role-players taking the part of the civil servants are creditable. They must be schooled by the trainer to reflect certain points of view and to shift their exhibited characteristics naturally as the role-playing sequence warrants.

Chapter Fifteen

Advocacy and Legal Research: Making a Start

Section A. The Office Law Library

At least two telling comments can be made about the relationship between paralegals and law libraries in legal service offices:

1. Many paralegals never go near the law library;
2. After being on the job for awhile, the paralegal begins to see the law library as a possible way for him to handle his cases better, and more importantly as a way for him to gain more demanding assignments from the office.

The law library is a monster. The books are large, univiting, often out of date and almost always out of order. The index to the individual books is usually hopelessly inadequate. The law library is a place where lawyers go, and only they appear to be comfortable there. Except on rare occasions, many paralegals stay clear of the library.

In one sense, this is as it should be. It would be a major catastrophe if the paralegal felt paralyzed every time he had a problem because he couldn't use the law library. The vast bulk of what the paralegal will be doing does not require him to do legal research in the library. To do his job, he needs (1) perserverence, (2) common sense and (3) training in substantive law of the areas he will be working in. He might lose his grasp on all three if he becomes glued to the law library, BECAUSE NORMALLY THE ANSWERS ARE SIMPLY NOT THERE. The more the paralegal becomes dependent upon the law library, the less effective he will probably become. His inability to use the library may become a convenient excuse for his not hustling with the faculties and facilities that *are* available to him.

Nevertheless, the law library is there and it tends to take on a certain image for the paralegal. After the paralegal has conducted his 500th preliminary client interview, after he has drafted his 500th order to show cause to stay an eviction for non-payment of rent, he begins, quite naturally, to get tired. *No one likes to be caught in the drone of the routine.* Whenever a paralegal gets a case that is unusual, he refers it to his supervisor, as well he should. He would like, however, to be able to do *something* on this unusual case before he has to turn it over, or at least to do something further on it while the attorney has it. Sometimes, the office will permit him to do so by taking the time to provide him with some extra training. More often than not, however, the paralegal is simply sent back to his standard routine of cases after he has made the referral to his supervisor. TO many paralegals, the law library is seen as a ticket out of this pattern.

How then to strike a balance between the danger of stifling initiative and common-sense because of an over-dependence on the library on the one hand, and the quite valid urge to be able to use the library as a tool for increased effectiveness and advancement on the other?

Section B. Doing Legal Research

The first point that must be made to paralegals is that the law library is *not* the only route to legal research. A paralegal is doing legal research when he asks another paralegal or a lawyer for an answer to a particular legal problem that has come up in the course of his work day. If the paralegal calls a legal service lawyer from another office who is an expert on a particular subject, the paralegal is again "doing" legal research. When legal research is performed in this way, two cardinal rules should be followed:

1. The paralegal should always write down the answer to his question(s) in the form of a checklist or guideline to himself which will go into his manual. Too often he simply gets the answer, applies it to the case he is working on and forgets it. The office attornies must assist him in the formulation of these checklists, but they should not write them for the paralegals. When the paralegal leaves the attorney to apply the answer, he should be asked to submit a brief writing to the attorney on what he understood from the conversation and this writing should be in the form of a checklist.

2. The paralegal should ask the attorney for a "tip" on how he could use the law library to begin trying to find the answer on his own. Maybe, this will only mean referring the paralegal to a three or four line statute or to a paragraph in a treatise. At the very least, the paralegal will have been introduced to a volume in the library. It may take some time before he is comfortable with using that volume, but at least a start has been made, not in the abstract.

Very often an office secretary or a paralegal is asked to act as "law librarian." This usually means nothing more than clearing off the table at 5 pm and keeping the loose-leaf volumes up to date with additions that regularly arrive in the mail. This assignment can be a dead-end task or a valuable inroad to using the library. The key is to come up with some way that the paralegal can relate to what he is shelving or keeping up to date. Is it possible, for example, for the paralegal to take 30 minutes a week and summarize his understanding of a particular page of newly arrived material for a law book? Will someone read what he has written and help him to write a better piece during the 30 minutes he will devote to the library next week? Will someone in the office devise five simple questions and direct the paralegal to a few pages of a volume where he should be able to find the answers? Will someone in the office ask the paralegal to read five pages of a library book and make a list of *every* word that he doesn't understand? Will someone then, over the next few weeks, either tell him the meaning of these words and/or tell him how to go about getting definitions of the words? Finally, will someone ask the paralegal to go back to the five pages, re-read it and see if it doesn't make more sense after having been through the definitions? In short, won't someone take just a little time to orient the paralegal to the law library? The orientation must be very gradual and supportive. No paralegal should simply be turned loose onto the library. The goal always is:

> ORIENT THE PARALEGAL TO THE LAW LIBRARY BY GIVING HIM SHORT (not more than 30 minutes) ASSIGNMENTS WHICH CAN BE BROUGHT TO A CONCLUSION.

Obviously, no paralegal should be asked to write a brief unless the office is 100% sure that the paralegal can handle it. Likewise, the paralegal should not be asked to research issues that don't have any readily identifiable "answers", at least not at the outset.

During the beginning stages of orientation, concentrate on two items:

1. How to use an index.
2. How to read a regulation.

Using the index is, of course, critical. It is also very difficult. There are very few good indices, particularly to sets of administrative regulations. This is where the paralegal needs a great deal of help. How are indices organized? What's a bad index? How do you try to find something under many headings of the same index?

Start off the index work very simply. For example:

1. Ask the paralegal to go into the library, pick any three books and write down the page numbers where the index can be found in each.
2. Take one index and ask the paralegal to list every heading and listing in the index that appears to be repetitive.
3. Take one index, give the paralegal one general topic and ask him to make a list of every item in the index that might cover or at least deal with that general topic.
4. Ask the paralegal to read five pages of any law book and to take a stab at writing his *own* index to cover those five pages. After he has discussed it with you, ask him to redraft it in order to try to come up with broader *as well as* narrower headings for the index.

In helping the paralegal understand or begin to understand agency regulations (which will probably be most relevant to his own work) explain to the paralegal that most agency codes are organized in a set pattern thusly:

1. A regulation first states what authority the agency has to write the regulation;
2. Some regulations will then describe the structure of the agency (*e.g* , who is the director, who is under civil service, where the branch offices are, etc.);
3. Regulations on the purpose of the agency;
4. Regulations on how a citizen applies for benefits of the agency;
5. Regulations on who in the agency is responsible for maintaining the service level;
6. Regulations on how the agency reduces or terminates the benefits;
7. Regulations on how the citizen can complain about this reduction or termination both in the agency itself and in the courts.

This general framework may be helpful to the paralegal in reading regulations.

The paralegal and his supervisor can have an "enjoyable" time with the interpretation of regulations. Pick a sentence or phrase in any regulation that would have two or more possible meanings. Point the possibilities out to the paralegal. Then pick a few more phrases or sentences and ask the paralegal if he sees "shades" of more than one meaning. It may be quite a revelation to the paralegal to learn that the language of regulations is often sloppy. It's not air tight simply because it relates to "the law". If someone takes the time to drill the paralegal in the identification of ambiguities, it can go along way toward domesticating the law library for him and making it more accessible to him.

The pace at which the paralegal can be oriented to using the law library is dependent upon:

1. The paralegal's interest;
2. The paralegal's ability;
3. The interest of the attorney in helping him;
4. The ability of the attorney to be imaginative in coming up with "handles" on using the library;
5. The time that both can devote to the exercises.

A lot can be accomplished with a few minutes each week if both paralegal and lawyer work at it.

Chapter Sixteen

Advocacy and Legal Writing

The techniques on writing skills outlined in this chapter do *not* apply to all trainees. The chapter deals primarily with those trainees who have considerable difficulty putting their thoughts on paper. It is submitted, however, that some of the guidelines outlined in this chapter also apply to those of us who have at least *some* difficulty writing.

Section A. The Fear of Writing

The quick answer to the problem of the paralegal trainee or employee who does not write well is to fire him or to have avoided recruiting him in the first place. This approach is eminently short-sighted. Writing problems simply do not disappear in this way.

If someone has not been used to writing, he will generally shy away from it and, indeed, be afraid of it. Putting something down on paper is too final. You can't maneuver into and around what you have written as well as you can if you say it orally.

Some may say that what holds them back from writing , even writing of the most simple kind, *e.g.* letters, is bad spelling and bad grammar. While there may be some truth to this, the problem often goes much deeper. Our society places an inordinantly high premium on written words. "Put it in writing," is the constant demand as if to say that nothing exists unless it's in writing and no one exists unless he can write well. The educated person can write; the uneducated person cannot write. This message is normally devastating for the person who has not been accustomed to expressing himself with a pencil and paper or with a typewriter.

If any one of us picks up a piece of paper belonging to someone else with writing on it, and we find a major spelling or grammatical error, our "natural" response is to smile. We don't have to be malicious to respond this way; it's simply something that everybody does. The author of this "error" however, is not likely to take much comfort from the fact that society as a whole makes fun of poor grammar and spelling. To the writer himself, it's normally an embarrassing put-down to know that he is being "smiled" at. He soon learns to avoid putting himself in the position of being singled out in this way. In short, he soon learns to stop writing.

It is true that some paralegals who have difficulty writing have little or no difficulty talking, and therefore appear to be able to function in a legal service office. A great deal of "talking" needs to be done in such an office: interviewing clients, calling social agencies, arguing with ghetto merchants, *etc.* Paralegals may be given assignments that primarily require them to be on their feet or on the phone. In time, however, it becomes clear that this is not enough. Reports have to be written, letters have to be sent out, forms and pleadings have to be prepared. The paralegal who must stop in his tracks when it comes time to put something down on paper is in trouble. The writing aspects of his job simply will not go away. If the paralegal does not eventually become comfortable with writing, he will become less satisfied with his job and his supervisors will begin to have doubts about his utility to the office. The issue of writing must eventually be confronted.

Section B. Overcoming the Fear of Writing

The worst approach that a trainer or an office attorney can take is to create the impression that the entire job of the paralegal is dependent on writing well. This message does not have to be *said* in order to be communicated. If the first thing that a trainer or office attorney asks the paralegal to do is to write something, then this message has begun to be conveyed. If the paralegal is handed over a massive text or is assigned to use a huge empty file, the message becomes clearer. Don't start where the paralegal is weak. Start where he is more comfortable. This may mean giving him, at the outset, walking assignments (*e.g.* serving papers, locating witnesses, *etc.*) and talking assignments (*e.g.* doing a preliminary interview, calling a caseworker to find out answers to specific questions, *etc.*) LET THE PARALEGAL FEEL USEFUL WITHOUT HAVING TO WRITE. Don't start off creating the image of the paralegal's job in terms of writing. PHASE INTO THE WRITING COMPONENT OF HIS JOB GRADUALLY AND SUPPORTIVELY.

As a corollary to the above approach, don't *begin* by suggesting to the paralegal that he should take an evening course in adult English, or in spelling and grammar. Such a suggestion may be enough to frighten him off permanently. In the best of all worlds, *the paralegal will reach this conclusion on his own* after he has been on the job for a while. Also, don't take the position that the only way to overcome the reluctance to write is to attempt writing and to keep at it. Under this approach, the supervisor/trainer simply piles writing assignments onto the paralegal's desk on the theory that if he keeps trying, he'll eventually get it right. This approach is too abrupt. In principle, the theory sounds good, but in fact it may intimidate even more.

What has been said about permaturely teaching the substantive law (*supra* chapter four, and throughout this text) also applies to a premature preoccupation with writing. If the training starts too soon with the complexities of substantive law, you run the risk of inhibiting the paralegal's own imagination and common sense in the field of advocacy generally. The same risk is created if the paralegal is loaded down with writing assignments at the beginning of his training or employment. A PARALEGAL HAS SOMETHING VALUABLE TO OFFER BEFORE HE LEARNS THE COMPLEXITIES OF SUBSTANTIVE LAW AND BEFORE HE DEVELOPS EFFECTIVE WRITING HABITS IN A LEGAL SERVICE OFFICE. Once this stage is reached, the paralegal should be able to phase into writing.

Everyone does some kind of writing sometime. We write notes to ourselves: we send letters to our friends, we compile shopping lists. Start at this level. Begin at a level that the trainee can be comfortable with. (If, of course, your paralegals are not intimidated by writing, start them off with sophisticated writing assignments). Don't make a production out of the initial writing assignments, *e.g.* don't say "draft me a memo." Avoid making the paralegal self-conscious about the writing. Don't ask him to begin writing on something he is not sure about. Start with something he knows well or does well, and ask him to write about it. The following are some suggested approaches along these lines:

1. Ask him to write a narrative resume. There may be no need to have it cover his entire life history. Simply have him deal with one aspect of his life, *e.g.*, his prior employment. You may want to see how he structures it himself, or you may want to talk about a particular organization style before he starts it.

2. Whenever he submits something to you, don't send it back to him with three pages of comments or talk at him for an hour. Follow three simple steps:

   a. Ask him to identify the *strengths* of his own writing (don't let him dwell on his frustrations yet; deal with whatever is positive about it, *e.g.*, it's clear in one section; it's legible; he covered a lot of ground, *etc.*).

   b. Then ask *him* to describe his frustrations about the piece; let *him* describe to you where he thinks it is not effective; you suggest to him other possible weaknesses, but only after you have *prodded* him to identify all the points that he can.

   c. Ask him how *he* would go about writing it differently; suggest other approaches to redrafting after he has finished his own analysis; have him re-draft the piece along the lines of his own (and your) suggestions.

3. Start with lists. Have him organize what he is doing in the form of one or two-word-item lists. After he has conducted a preliminary client interview (or while he is conducting it), have him compile a list on some aspect of the interview. For example, a list of personality traits that he observed in the client, organized in the order of the most significant to the least significant trait. Such a list may look like the following:

1. Client was confused
2. Client wanted a divorce
3. Client was shy
4. Client was poorly dressed
5. Client cried

etc.

Once such a list is presented to the supervisor he can discuss it with the paralegal. What does the paralegal think about the list? Is the fact that the client wanted a divorce a personality trait? What do you mean by "confused"? Can you be more specific? Gan there be sub-topics under "confused?" How would the paralegal re-draft the list on this interview? When the paralegal conducts another interview with a different client, would he organize the list differently?

How about a fact list organized chronologically? Ask the paralegal to make a brief list of all of the facts that the client described. More likely than not, the client will have told her story in a disorganized fashion. By putting together a fact list, arranged chronologically, the paralegal will have to do some thinking.

How about a strategy list of the approaches taken by the paralegal to get the information out of the client during the interview? *e.g.*, "I started with a friendly approach"; "I was very direct." *etc.*

Give the paralegal an office file and have him make a list of the kinds of documents he finds in it.

Whenever possible, have the lists (after they have been re-drafted) go into the paralegal's manual (See chapter six, *supra*). Most of the lists can be easily translated into checklists and guidelines, *e.g.* "How to write down the facts from a client interview," *etc.*

Other possible lists:

a. the structure of the legal service office
b. the structure of a welfare office
c. the structure of the office law library
d. finding witnesses
e. *etc.*

4. Have the paralegal write a description of his job.

5. Drafting sample forms. After the paralegal has done something a few times, ask him to make a preliminary draft of a form that he or the office might want to use generally. For example, how about a form for the client to fill out while waiting to be interviewed which covers some preliminaries and which can become the starting point of the discussion when it is time for the client to be interviewed by the paralegal?

Section C. Strategies in Legal Writing.

Again, the basic advocacy checklist becomes relevant. (See inside page of rear cover). Which of these techniques are applicable to legal writing? How can the list be changed and improved stemming from the writing assignments below?

a. Draft a fictitious letter to a ghetto merchant complaining about faulty merchandise;

b. Draft a fictitious letter *in response* to a letter coming to the office from an agency that says that the client is not eligible for welfare.

c. Draft a fictitious letter requesting a fair hearing.

d. On one day have the trainees write a fictitious letter to a social security office requesting more time to prepare for a disability hearing. On the next day, have the trainees exchange these letters among themselves and have each trainee draft a response to this letter that denied the request.

Paralegals often draft pleadings of one form or another which the attorneys later sign, notarize and send out. For example, the paralegal may draft all of the preliminary pleadings for an uncontested divorce, or draft an order to show cause staying an eviction. A number of training assignments can flow from such material:

a. Give everyone a fact situation involving adultery as the grounds for divorce. Have everyone draft a statement on this ground that will go into the divorce pleading.

b. Have them draft "excuses" of why the client failed to pay the rent. These "excuses" then become part of an order to show cause why the eviction for non-payment of rent should not be ordered by the landlord-tenant court.

c. Have them identify the advocacy skills that they used or failed to use in the above examples.

d. Have them re-draft the pleadings on the basis of the discussions on the first draft.

e. Have them re-draft again.

f. Have them draw-up some checklist/guidelines on drafting pleadings which will go into their manuals.

g. Have them go back to the original Summary of Advocacy Skills Checklist and "beef" it up in the light of the writing assignments.

The segment of the training dealing with legal writing does not have to be covered all at once. It would be more appropriate to have the trainees work on the general principles at one time and then come back to them throughout the training whenever writing becomes relevant to the topic under discussion.

Chapter Seventeen

Advocates, Preventive Law and Self-Advocacy

It has been persuasively argued that we are in need of a heavy dosage of preventive law. Legal services must do more to help their clients *avoid* their legal problems and to do more work on them themselves when they do arise.

Much of this text has been organized around the principle that advocacy is something basic to us all. This reality is the starting point of the advocacy training program for paralegals. How then to take this concept one step further and to use it to train clients to be advocates for themselves whenever possible?

This is not to argue that the legal service office needs to try to close itself down by training the entire community to be their own lawyers. The concept of community legal education is not new. It is designed to help the clients avoid legal problems and to know what to do on their own whenever they confront a legal problem. The paralegal staff, trained in the basic principles of advocacy, can add another dimension to community legal education in a number of ways. None of these approaches should be attempted, however, until the paralegal has been on the job for a considerable period of time (*e.g.*, eight to twelve months) and the office is sure that the paralegals are able to handle themselves.

1. The paralegals can draft some community bulletins or leaflets on specific topics of the law using everyday language, charts and perhaps some picture-cartoons;

2. The paralegals can speak to community groups about specific advocacy skills or about specific law topics;

3. The paralegals can help other community organizations run their training programs, *e.g.*, teach an advocacy course to community out-reach workers of a local CAP agency or to a chapter of the National Welfare Rights Organization;

4. The paralegals can help organize community groups around certain legal issues, *e.g.*, consumer fraud, and teach this group to deal with their own problems in this area;

5. The paralegal can call into the legal service office groups of five or six of the office clients and provide them with some self-advocacy skills.

With respect to the individual client that the paralegal is helping, there are a number of ways in which he can help the client to develop self-advocacy skills and assist himself on his own case:

1. See that the client is involved in her own case. For example, ask him to pick up a form at an agency he is having trouble with; ask him to try to locate his brother who has some information that you need. Don't do everything for the client. When it is clear that he can do certain things himself, let him do so.

2. While interviewing the client (chapter nine, *supra*), the paralegal should take every opportunity to point out to the client what should be done the next time the same situation arises. Learner-focused training applies here as well. The paralegal should not simply tell the client what she should do "next time." He should ask the client "what do you think you should have done this time" and "what do you think you should do next time" if the same situation arises again.

The paralegal need not, however, turn the entire interview into a training session for the client. The training points should flow out of the conversation and should be very brief.

There is no better way for a paralegal to learn something than to teach it *particularly when the teaching has to be accomplished within the context of providing legal services.* The paralegal's roles as helper and teacher need not be inconsistent. They can easily complement each other. It can be argued that part of the process of providing legal services is to teach the clients to be self-advocates.

The client, of course, should always feel that the legal service office is available to him and that the paralegal is not trying to get rid of him (a) by criticizing him for not handling his own problem this time or (2) by suggesting to him that he should not bring his problem in the next time. The goal is simply to develop as much self-sufficiency in the client as possible. What should he do, for example, when he can't reach the legal service office or when a crisis arises on the week-end when the office is closed? The more guidelines the client has in handling his own problem, the better. He may be able to solve his problem on his own, and when and if he comes to the legal service office he may be better prepared to help the office assist him.

The following are the kinds of items that the paralegal can assist the client in learning:

a. what to do when your check doesn't come;

b. what to do when you son is arrested;

c. how to cover yourself with documentation and record-keeping;

d. how to ask the welfare department for information;

e. what to do when the agency tells you you are ineligible;

f. what to do if agency personnel is rude to you;

g. what to do when an agency official comes to your home;

h. how to apply for public housing;

Whenever a client runs into situations such as these, he should know what to do on his own. *This is not to say that he is to be encouraged to bypass the legal service office whenever he confronts these situations.* It is simply to argue that he should not feel paralyzed. He should be taught to take action in addition to coming to a legal service office. The paralegals can be enlisted to help provide this teaching through vehicles such as those discussed in this chapter.

Chapter Eighteen

Advocacy And The Paralegal's Own Agency

It may be that one of the most important agencies before which the paralegals must be advocates is their own agency. This is not to say that the paralegals must be renegades. The fact is that a legal service office is like any busy agency that operates under pressure; it's easy for staff members to get lost in the shuffle. To overcome such problems, the paralegals must be effective advocates.

There are a number of specific problems about which the paralegals may have to be advocates:

1. the office as a whole or certain members thereof, do not understand what the paralegals are there to do;
2. they may be threatening to other staff members, *e.g.*, to the clerical staff;
3. they may be used as errand boys rather than as paralegals;
4. they may not be adequately supervised;
5. no one may be taking any interest in training the paralegals;
6. no one may be helping the paralegals to develop their capacities to do more demanding work;
7. they may be poorly paid;
8. they may have no career ladder options;
9. the future funding of their jobs may be in doubt;
10. their office conditions may be poor (*e.g.*, no office space or ready access to a telephone);
11. they may be receiving contradictory instructions from their supervisors;
12. they may feel that the office is not hiring enough minorities;
13. they may feel that the office is providing inadequate service to the community.

How should such problems be dealt with? Should the trainer deal with these problems during the training program or would this be premature?

It may be that the best time to deal with them is when and if they arise. About two months after the basic advocacy course has been completed and the paralegals have been on the job, they should be brought back together again to deal with their own agency. Which if any, of the above problems exist? How can they be resolved? By this time, the paralegals should be well on their way to becoming expert advocates. How can they make the most effective case for change? Refer again to the Advocacy Skills Chart (inside page of back cover). Does this chart apply to the paralegal's own agency? How can it be adapted to fit the need?

What is absolutely clear is that any of the above problems should not be allowed to drag on. They should be confronted in a training context *as soon as possible.* Hopefully, these training sessions will not turn into bull or bitching sessions. As advocates, the trainees should be keyed into strategies and plans of action to effect change.

Chapter Nineteen

Supervision and Training

Section A. Supervision IS Training

Without question, one of the most important challenges of an in-house training program is to get the *whole* house involved in the training, particularly the attorneys. As pointed out in chapter three, *supra*, the pre-planning phase of the training program had to involve the entire office for two reasons:

1. To come up with a rational outline of the needs of the office which would then be translated, to the extent possible, into new roles for paralegals, which would then be translated into a preliminary training curriculum.

2. To prepare the entire office for the new roles of the paralegals.

The latter necessity makes it all the more important to involve the office attorneys in the actual training. The paramount reality is that the paralegals who do not develop close working relationships with the office attorneys will not survive very long. This is true for two reasons. Bad relationships, more often than not, destroy the motivation of the paralegal and more importantly, they stifle the paralegal's opportunity to learn and to grow on the job.

Attorneys supervise paralegals. Supervision is training. Attorneys are trainers. A good supervisory environment is not a given; it must be created, developed and nutured. The factors that stand in the way of its development are as follows:

1. lawyers don't understand the paralegals and vice versa;

2. lawyers don't trust the paralegals and vice versa;

3. lawyers have no time;

4. the paralegals are bogged down and locked into the routine and the mundane

5. lawyers don't fully appreciate their responsibilities as supervisors and therefore as trainers of paralegals;

6. paralegals don't fully appreciate their responsibilities as supervisees and therefore as trainees of lawyers;

7. lawyers don't believe in the initial training program.

This is all to say that the training of paralegals in advocacy cannot be done in a vacuum. LAWYERS CANNOT EXPECT THAT THE TRAINEES WILL COME OUT OF THE TRAINING PROGRAM FULLY TRAINED. There is no such thing as a "fully trained paralegal." What exists are paralegals who have been given a foundation in basic advocacy skills and who are in need of every opportunity on the job to continue their education.

Every office attorney, therefore, must be involved in the training program of paralegals on two levels; (1) during thr formal training and (2) while the paralegals are receiving supervision-training on the job.

Section B. Involvement of Office Attorneys in the Formal Training

The office attorneys should be fully acquainted with the methodology used in teaching the basic advocacy course. If the methodology used has been learner-focused training then everyone in the office should understand this approach. This is not to say, of course, that everyone will agree with such a philosophy of legal education. At the very least, the trainer and those who dissent from his approach should be on the same wave length as to what in fact is being attempted. Those that do disagree should be encouraged to voice their criticisms. The trainer may find not only that he can tolerate the points made by the critics, but more significantly, he may find that the points are so valid that they must be confronted in order to make the training program work. There are a number of ways to achieve this mutual understanding:

1. the trainer can disucss his approach with each attorney individually;
2. the trainer can discuss it at a staff meeting;
3. the trainer can send a memo to all of the attorneys on his training format;
4. attorneys can be asked to sit in on some of the training sessions;
5. attorneys can be asked to participate in some of the role-playing;
6. the office director can assign one, two or three attorneys to evaluate the training program and to make periodic reports to him which should be shared with the trainer;
7. in addition to having some or all of the trainers design and teach the substantive law components of the training, they should be encouraged to help structure and teach some of the basic advocacy courses;

8. the attorneys can be asked to supervise the trainees on assignments while they are still in training (e.g., the trainees submit some of their outlines/checklists to attorneys who will listen to the trainee explain them and who will react to them; the attorneys can devise field investigation assignments for the trainees and assist them in carrying out these assignments);

9. The attorneys, or small groups of them, can be asked to take the role of the trainees in a classroom setting and listen to and respond to attempts by the *trainees* to train the attorneys in some aspect of the basic advocacy course.

Section C. Involvement of the Attorneys in Training on the Job.

The critical test comes when the trainees have been "graduated" from the formal training program and are on the payroll. The effectiveness of attorneys as trainers at this time will be dependent upon the extent to which they have been convinced of the following:

> FOR AN OFFICE ATTORNEY TO BE A GOOD TRAINER ON THE JOB, IT DOES NOT NECESSARILY MEAN THAT HE WILL HAVE TO DEVOTE SO MUCH EXTRA TIME TO THIS TASK THAT HE WILL HAVE TO TAKE SIGNIFICANT TIME AWAY FROM HIS PRIMARY RESPONSIBILITIES.

If the attorney is not convinced of this, he will not be, he cannot be, an effective trainer. There are a number of guidelines for an attorney to follow in order for him to be a good trainer without being burdened by his training function.

1. Never start talking to a paralegal in the abstract;

2. Never give a responsibility to a paralegal without structuring feedback. If, for example, the attorney spends ten minutes describing a certain point, after he is finished, he should ask the paralegal to write down what he has understood from the conversation, preferably in the form of a checklist that the paralegal might be able to put in his manual. The attorney should not have to wait until the paralegal carries out or fails

to carry out the responsibility given to him in order to determine whether the ten minutes were productive.

3. Teach the paralegal to "peek" over your shoulder and, whenever, possible, encourage him to do so. Again, however, get some feedback. If you let a paralegal watch you interview a client, or read one of your files or listen to your conversation with a welfare caseworker, ask the paralegal to take notes and to quickly put down on paper what he has seen, heard or read in some organized form that you ask for. The attorney has to teach the paralegal the discipline of organizing his thoughts and his observational powers. One way to work on this is to have the paralegal watch you perform and to write down what he has been watching.

4. When the attorney can develop a relationship of trust with the paralegal, he can "peek" over the shoulder of the paralegal as the paralegal works and write down, briefly, what he has observed in the form of a guideline/checklist for the paralegal.

5. Never talk jargon to the paralegal *before* the office attorney has made sure that the paralegal understands the common sense foundation of the jargon.

6. Be constantly supportive of what the paralegal does "right."

7. Be aware of when the paralegal is getting into a "rut" with routine tasks that do not challenge his abilities.

8. The office attorney can devise two or three questions that relate to a particular:

    a. office file
    b. statute
    c. regulation
    d. etc.

   and have the paralegal answer these questions on his own to be later submitted in writing in checklist or guideline form to the attorney. The writing can be very informal - a series of handwritten notes will do.

9. The office can help the paralegal build a legal dictionary. He can give the paralegal one word a week (e.g. "civil" "jurisdiction," "pleading," etc.) and ask the paralegal to come up with a definition by the end of the week. The paralegal can be encouraged to ask other attorneys about the meaning of the "word of the week;" he can be directed to some readings or case files that deal with the word, *etc.* The attorney should assure himself that the paralegal is able to understand the word in his own language style. The paralegal can be asked, in addition to coming up with an understandable definition, to use the word in three sentences that demonstrate a "correct" use of the word in a legal context.

How much time will such exercises take? It depends upon the working relationship between paralegal and lawyer. If they hardly ever see or interact with each other then all of the time that they spend together will be forced and burdensome. If they have developed a mutual trust and respect, on the other hand, then the learning experiences will tend to flow naturally out of job responsibilities that they both undertake either jointly or partially together. When this happens, any extra time that is needed for special training assignments does not become an intrusion to either.

It would be extremely dangerous for the paralegal to work with only one attorney in this way. Although the paralegal may be "assigned" to work primarily with one attorney, the paralegal should develop interaction of the kind decribed in this chapter with *all* of the office attorneys.

The office is infested with learning opportunities. But they will never be capitalized upon unless the office attorneys structure the opportunities for the paralegals. *It will not be sufficient, for most paralegals, simply to throw them into the water to learn on their own under the pressure of immediate responsibilities.* Even if this works for some paralegals, what will be created will be independent operators. The attorneys won't know what the paralegals are doing. The paralegals won't have the benefit of learning from the myriad of approaches to problem solving that an office of attorneys represents and can share. The same is true of the potential of paralegals to train lawyers.

Chapter Twenty

Teaching The Substantive Law

Section A. Options

After the basic advocacy course, the trainees should be ready to delve into the substantive law. There are three basic ways to teach substantive law:

I. *Overview:* Take an entire area of the law (welfare law, consumer law, landlord tenant law, etc.) and cover each individual area from beginning to end.

II. *Case Analysis:* Take an individual case, client or situation (*e.g.*, a individual client wants to apply for welfare) and deal with the ramifications of that case, client or situation from the perspective of the interrelating substantive law topics. (*e.g.*, eligibility rules for welfare, welfare for rent which gets you into rent control, welfare for household furnishings which gets you into consumer contracts etc).

III. *Systems:* Break down an area of the law in your office (*e.g.*, divorce law) and translate it in terms of flowcharts, forms, checklists and systems. Teach components of the process and the substantive law governing those components to the paralegals who will work with other paralegals and with lawyers on the entire "streamlined" process.

Section B. Overview

The "easiest" approach is to provide an *overview.* Take an area of the law and cover it from "A" to "Z". If you adopt this traditional approach, do so within the context of the basic advocacy course. The paralegals have already been acclimated to advocacy. They may even know a good deal about the substantive law. Build upon this. The trainees, for example, may have already dealt with applying for welfare and challenging a welfare decision in an administrative hearing. They now need to know what is meant by welfare "law." Is welfare a legal right or a privilege? What are the welfare laws in your jurisdiction? The trainees should know how to go about finding out *on their own* what benefits an agency provides because this is part of any advocate's basic package of skills. What kind of answers should they find when they go hunting? What kind of technical rules should they know about? What jargon is used in this field?

The trainees should have a barrage of questions for the trainer(s) of substantive law. If the questions are not forthcoming, then the trainer should find out if he is talking over their head. He should know what their strengths are. He should not talk "at" them. He should give them hypotheticals and get their responses before he delves into "the law." He should search out common sense foundations for the law he is teaching before presenting it in its most technical form.

After the first hour, he should stop and see what is being absorbed and what is being missed. What kinds of notes are they taking? IS HIS PRESENTATION SUCH THAT THE TRAINEES CAN TRANSLATE IT INTO GUIDELINES AND CHECKLISTS, AND IF SO, IS HE MAKING SURE THAT THEY ARE ORGANIZING THEIR NOTES IN THIS FORM?

The presentation on the substantive law should *not* be organized along the following lines:

A. Historical Background
B. Legal terminology
C. Programs available
D. Who is eligible
E. The Right to Service
F. The Right to a Hearing
G. etc.

This is too abstract. Rather, the outline of his presentation should look something like the following:

Applying For Welfare:

1. How to Understand the Categories;
2. How to cite the law to the agency;
3. When you can demand certain documentation
4. How to fill out an F28B form;
5. Terms that you should know; where you will run into them and what to do when you see or hear them;
6. When you can ask for an agency review of the decision on eligibility;
7. How many days you have to file for a review and how to ask for an extension for the deadline;
8. etc.

The outline can then proceed to the law of maintaining proper service levels and the law of termination and how such matters can eventually find their way into the courts. The entire approach is pragmatic in a "how-to-do-it" sense. The goal is for the trainees to come away with a series of checklists and guidance charts for their manuals. Whenever possible, abstract concepts of the law should be translated into manual form.

Section C. Case Analysis

The standard complaint against the overview method of teaching the substantive law is that it breaks up an experience unnaturally. It is often the case that any one client of the office will be given legal services on more than one problem. When the client walks in the door and starts talking, a large variety of problems often begin to come out. The danger of the *overview* method of teaching individual substantive law topics is that the paralegal will not be able to catch this variety of topics. When the paralegals sees "welfare," for example, he may block everything else out. He won't be able to interrelate the substantive law areas in one particular client story because of the isolated way in which the *overview* method taught him the substantive law.

The *case analysis* method is designed to try to overcome this problem. Suppose that there are five substantive law topics (A to E) that the office wants to give the paralegals training in. Each of the five topics has 150 sub-topics or units that need to be covered. Instead of covering the 150 units from beginning to end in each topic (a grand total of 750 units: 5 x 150), the case analysis method would develop a series of hypotheticals (or real, or semi-real) fact situations that would call for some training in, for example, 20 units of "A", 25 units of "B", 20 units "C" etc. Each new fact situation would call for re-training in some of the units covered in prior hypotheticals and would call for new training in units that were not covered in the prior hypotheticals. When it is over, all 750 units of the five substantive law topics will have been covered.

For example, suppose that the five substantive law topic are welfare law (A), consumer law (B), landlord tenant law (C), divorce law (D), and adoption law (E). The sub-topics or units under each of these five topics would be items such as "how to apply," "filling out the complaint," "serving the papers," "special-forms," *etc.* Some of the units will be the same under all five (*e.g.*, service, investigation *etc.*) but most of the units for each of the five topics will be different since the substantive law provisions of each of the five topics are basically different.

FIRST HYPOTHETICAL: Involves a fact situation that raises problems under B and C. In order to treat these topics under these facts, suppose that the trainer needs to provide training in 22 units of B and 7 units of C. He does so.

SECOND HYPOTHETICAL: Involves a new fact situation that raises problems in B, D and E. To treat these topics, the trainer may need to cover 13 units of D and 28 units of E. To get at the B topic, the trainer needs to recover 16 of the 22 units that were originally treated in the first hypthetical and then cover 12 new units of B. Hence by the end of the second hypothetical, the trainer has covered 34 units of B (22+12). Subsequent hypotheticals will continue to build on this until all of the units are covered.

The danger, of course, with the *case analysis* method is that the trainee will become confused. While trying to get the benefit from the case analysis method (*i.e.,* seeing the interrelatedness of substantive law topics), the trainee will lose the benefit of the overview method (*i.e.,* seeing the entirety of individual substantive law topics). There are two answers to this valid objection:

(A) If the training in the *case analysis* method is done well, there will be minimal confusion. If the fact situations are carefully constructed, coherence will not be lost. If the trainer goes back over the units covered in prior hypotheticals to insure that everyone is with him before treating the new units on the hypothetical currently under examination, the progress will be plainly visible.

(B) It's worth trying the *case analysis* method even if some confusion does result. The value of the *case analysis* method is so strong, that it's worth taking the risks that it entails. The trainer should not expect that he will cover everything. It's appropriate for him to leave some units unclear until the paralegal gets on the job when he will be better able to fit the pieces together.

To be sure, the *case analysis* method may take more time and thought than the *overview* method. It is urged, however, that it be attempted. Once someone does an effective curricula design, it will always be available for re-use in later training programs.

Section D. Systems

Under the systems approach to teaching substantive law topics, the emphasis is on the development of flow-charts, checklists and forms. Divorce law, for example, is "stream-lined" into a series of tasks that may involve more than one paralegal and more than one attorney on any given case. Elaborate checklists and manuals are available to everyone along the line. Teaching divorce law, therefore, is teaching how the paralegal fits into the *system* of delivering legal services on divorce cases.

Considerable work needs to be done to develop the system before it is taught. The system starts with the client coming in the door. A form is filled out by a paralegal giving certain information. The *system* has some way of crosschecking the validity of the information on the form. For example, it is reviewed briefly by another paralegal or by an attorney. Then the next step in the system takes place. If it is document gathering, then there is a designated way of going about this. Certain files exist where the documents are to be kept and recorded. Someone in the office has the responsibility to periodically review the document file. The *system* proceeds throughout the steps involved in this manner until the case is concluded.

The systems method is designed to overcome the problem of one person working on one case entirely with no one else in the office knowing the current status of the case or knowing if what has been done in the case thus far has been done properly. Without a *systems* approach, cases became buried in the maze and no one is aware of what is happening until a crisis arises.

Chapter Twenty-One

The Slow Learner

If you look at a group of ten trainees, you often will find the following rough breakdown: two will be excellent, six will be average to fair and two will be poor. How do you deal with the middle and bottom of the spectrum?

Some of the issues in this chapter may appear to be unrelated to the process of training. These issues must be confronted, however, *before* the training program is over, in fairness to the trainees involved and the entire office. Furthermore, it is submitted that all of these issues *are* within the domain of the trainer. He cannot assume that the recruiters have brought him trainees who are all ready, willing and able to fit into his training scheme. Part of the trainer's responsibility is to develop or inspire readiness, willingness and ability. He cannot, of course, be expected to perform miracles. He can, however, be required to assess the progress of each trainee from a number of perspectives. He must be tuned into the total picture, which means that he must sometimes look beyond the four walls of the classroom.

First of all, the trainer needs to try to define what the problem of the slow learner is, and indeed, whether a problem exists at all.

Does the trainee really want to be there?

Has this trainee been improperly recruited? Is it less question of a lack of ability than of a lack of interest in (a) the training program or (b) being a paralegal? At some point, it is appropriate to put this question to the trainee. He will appreciate honesty with tact. Point out to the trainee the signs that everything is not going as it should. Cut through the rationlization and "bull" and ask the trainee: is this something you want to do; do you really want to be here?

Are there unavoidable outside interferences?

If a trainee is a mother with six kids, who is raising them on her own, its very likely that this trainee may have trouble getting to the training session at 9AM everyday and that she may not be able to find time to do any "homework." How much accommodation can you make? Clearly, you do not want to by-pass a potentially excellent paralegal if it can be avoided. It may be that the outside situation is so impossible that termination is the only alternative. There are several tests that you can apply to determine whether a less drastic alternative should be explored:

a. Has this trainee demonstrated ability or are you still unsure?

b. Do you reasonably suspect that this trainee is using the outside problems as an excuse?

c. Does this trainee need all of the training that you have mapped out?

d. Ask this trainee to make a list of the times during the week when she is available for training and determine whether any special tutoring is possible during these times.

e. Are the outside problems permanent, or is it reasonable to expect that they will be solved or ameliorated in the not-too-distant future?

f. Can you develop any self-study materials for this trainee to use on her own?

Does the trainee need some preliminaries that your training program can't provide?

If the trainee has trouble understanding or speaking English, the training program may be beyond her unless you can make a language class available as well. Does your training program require any degree of proficiency in reading and writing? Does the training program have the capacity to train people in these skills? If not, then trainees who do not come to the program already equipped to perform at the level of proficiency required are obviously wasting their time.

Is the trainer "threatening" the trainee?

Without knowing or intending it, the trainer may be "threatening" the trainee, not in the sense of violence, but in the sense of approach, manner and style. If the trainer is overpowering, he may be establishing lines of communication only with equally overpowering trainees. If the trainer is not faithful to the philosophy of learner-focused training, he runs the risk of leaving no room in which the trainee can feel comfortable. The trainer might be sending out subtle messages that he "likes" articulate trainees and doesn't "like" inarticulate ones. There is no better way to turn off a large segment of the class. The trainer must be versatile in more than one level of communication. *He must be able to listen.* He must be able to determine how different people get started. One student may want to be left alone for a period of time during which he will assess what is happening. Another will feel left out if he is not recognized very early. Some are frightened to volunteer until they are sure that they won't be crushed by fellow trainees or by the trainer. Some need to talk and work in conjunction with certain types of fellow trainees. If the trainer is not tuned into such realities, he may be very "threatening" indeed.

The key to dealing with the problem trainee is to take the time to find his own particular strong points and to build on them:

1. What do they like to talk about?
2. What are some of their past experiences that they are proud of?
3. In what setting are they comfortable?

Locate such areas and use them as a starting point.

Make a special effort to try different approaches:

1. Individual tutoring by the trainer;
2. Individual tutoring by a fellow trainee who is more advanced and who has a facility in dealing with people;
3. Ask the problem trainee to prepare a topic to teach the rest of the class (*e.g.*, after you have covered a topic in class, tell the trainee that you would like him to teach the same topic during part of the next day); be sure that you and the other trainees are very supportive;
4. Ask this trainee to take a different seat in the classroom if this might help to provide a change in perspective;
5. Involve this trainee in role-playing experiences that he can be comfortable with.

Chapter Twenty-Two

Evaluation of the Training Program

The evaluation should be multi-leveled. There should be evaluations made by:

1. the trainer(s)
2. the trainees
3. the office director
4. the office attorneys

The evaluation of the training program should be designed TO FEED BACK INFORMATION TO THE PROGRAM SO THAT THE REMAINDER OF THIS TRAINING CYCLE AND THE NEXT TRAINING PROGRAM WILL BE A BETTER ONE.

The evaluation should be structured along the lines of the following questions:

1. What were my original conceptions of the goals of the training program?
2. Did I sense a change in the goals at any point? If so, from whom? What changes?
3. What was the original approach taken to accomplish these goals?
4. Was there a shift in this approach? If so, on whose behalf? What changes?
5. What I got out of the training program?
6. What did I contribute to the training program?
7. Where was the training program strong and why?
8. Could these strong points have been made even stronger? If so, how?
9. Where was the training program weak and why?
10. Could these weak points have been avoided? If so, where and how?
11. What should the next training program look like?
12. Were the original goals accomplished? How? How not? Should there have been different goals?

13. Which trainees did well and why?

14. Which trainees did poorly and why?

15. Which trainers did well and why?

16. Which trainers did poorly and why?

17. etc.

When should the evaluation take place? For the trainer(s), he should write down his evaluation during the middle and at the end of the training program. The same is true of the trainees. The director of the office should evaluate it at the end of the training program and should see to it that the other evaluation reports are fed to him and distributed by him periodically.

How much time should the evaluation take? They should not take more than twenty to thirty minutes to write IF EACH PERSON WHO IS ASKED TO WRITE AN EVALUATION IS GIVEN A FORM WHICH CLEARLY INDICATES WHAT JUDGMENTS ARE REQUIRED. Long narratives are usually not productive and are very time-consuming. The "form" approach is quicker and more to the point.

To be sure, a definitive evaluation will have to deal with the question of how well or how poorly the paralegals are doing on the job as *as a result of* the strengths and weaknesses of the training program. Must it be said, for example, that the level of performance of the paralegals was achieved *in spite of* the training program? Answers to such questions are obviously very difficult to achieve. A computer may be needed to deal with the issues involved. There are too many complex variables. Instead of this kind of evaluation, however, it is recommended that the office stay with a *descriptive* evaluation rather than worrying about a cause-effect evaluation. It's more practical to describe, to the best of one's ability, what one was trying to do and what one saw happen,with an eye toward *feed-back* to the program of useful information. This information will either be used to help restructure the training program while it is in progress or it will help to restructure the next training program.

In fairness to the paralegals, the evaluation should be thorough. A comprehensive evaluation is essential to making the case that paralegals are a valuable asset to a legal service office. If the results of a good (sophisticated) evaluation lead to a different conclusion, then the paralegals need to know this as well before making a major investment to the program (or an even greater investment beyond the training program). This is also to say that the evaluation must be INDIVIDUAL as well as general. Each trainee should know where he stands at the beginning, middle and end of the training program. What are his strong and weak points? What areas need further work and what plans will the office make to assist this trainee?

Unfortunately, most paralegal training programs (as well as most paralegal programs generally,) are never evaluated. People in the office are only able to make rough evaluations ("We like him." "He's not motivated." "He's not trained." *etc*) There is, however, no real sense of what such "evaluations" entail. No one takes the time to determine what has happened and what is happening. It makes good sense to design and implement a rational evaluation of the training program.

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SUMMARY OF ADVOCACY SKILLS CHECKLIST

I THRESHOLD CONCERNS

1. Defining Your Goals in Order of Priorities
2. Deciding When to Intervene
3. Determining Whether you are Taking it all too Personally

II ADVOCACY-PRESSURE SKILLS

1. Cards on the Table
2. Service
3. Ask for Authorization
4. Chain of Command
5. Insist on Common Sense
6. Find the Points of Compromise
7. Uncover the Realm of Discretion
8. Demonstrate the Exception
9. Cite the Law
10. Interpret the Law
11. Buddy
12. Make Clear that the Case is Important to You
13. Redefine the Problem
14. Do a Favor
15. Third Party as Your Advocate
16. Support of Third Party
17. Preach
18. Embarrassment
19. Anger

III EVALUATE THE SKILLS USED

1. Are you making yourself clear?
2. Are you creating more problems than you are solving?
3. Are you accomplishing your goal?

IV ADAPTATION:

Are you flexible enough to shift your technique?

V RECORDING

1. Describe what you saw.
2. Describe what you did.
3. What verification or documentation did you make or come across?